



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Contract Review

OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION

The Impact of VA Allowing
Government Agencies to Be
Excluded from Temporary
Price Reductions on Federal
Supply Schedule
Pharmaceutical Contracts

REVIEW

REPORT #18-04451-06

OCTOBER 30, 2019



The mission of the Office of Inspector General is to serve veterans and the public by conducting effective oversight of the programs and operations of the Department of Veterans Affairs through independent audits, inspections, reviews, and investigations.

In addition to general privacy laws that govern release of medical information, disclosure of certain veteran health or other private information may be prohibited by various federal statutes including, but not limited to, 38 U.S.C. §§ 5701, 5705, and 7332, absent an exemption or other specified circumstances. As mandated by law, the OIG adheres to privacy and confidentiality laws and regulations protecting veteran health or other private information in this report.

**Report suspected wrongdoing in VA programs and operations
to the VA OIG Hotline:**

www.va.gov/oig/hotline

1-800-488-8244



Executive Summary

The VA Office of Inspector General's (OIG) Office of Contract Review examined temporary price reductions on pharmaceuticals obtained by federal agencies under Federal Supply Schedule (FSS) contracts.¹ A temporary price reduction (TPR) is a voluntary, volume discount offered by drug and pharmaceutical vendors.² This review was prompted in part by a prior OIG preaward contract review in 2017, in which a pharmaceutical vendor did not offer the same TPR to all eligible government agencies purchasing a particular FSS drug. In that case, VA, which has been delegated the authority and has the obligation to negotiate FSS prices on behalf of other federal agencies, received a TPR that was more favorable than any price reductions offered to other agencies.³ VA also allowed the pharmaceutical vendor to exclude certain FSS customers from the TPRs altogether. The findings from that review prompted the OIG to examine TPRs and their impact on FSS pharmaceutical pricing practices more broadly.

The purpose of this review was to determine the prevalence, basis, and administration of TPRs managed by VA and their impact on government-wide contract negotiations when offered only to certain government agencies and not others. Given VA's role as the designated negotiating authority for contracts involving billions of dollars of pharmaceutical products each year, it is critical to ensure that VA is a strong steward of these taxpayer dollars and operates in the interest of all federal agencies it represents.

The OIG recognizes the significant savings and benefits afforded by establishing TPRs on pharmaceuticals and other products. The purpose of this report is not to discourage pharmaceutical vendors or others from continuing to provide TPRs to the federal government. However, the OIG has significant concerns about the process, impact, and fairness related to the establishment of TPRs. Accordingly, to promote transparency in the TPR process and address those concerns, the OIG is publishing this report.

What the Review Found

The OIG found that although VA has been delegated the responsibility to negotiate prices on behalf of all federal agencies, its National Acquisition Center (NAC) has been routinely allowing

¹ Federal Acquisition Regulation (FAR) part 38, sub. 38.1, 38.101(a), "General," accessed on October 9, 2019. "The Federal Supply Schedule program, pursuant to 41 U.S.C. § 152(3), provides federal agencies with a simplified process of acquiring commercial supplies and services in varying quantities while obtaining volume discounts. Indefinite delivery contracts are awarded using competitive procedures to firms."

² Temporary price reduction is not defined in any federal law or regulation. This definition was obtained from OIG interviews with FSS Service contracting officials on October 16 and 17, 2018, at the National Acquisition Center (NAC) in Hines, Illinois.

³ VA OIG, *Semiannual Report to Congress*, Issue 78, April 1–September 30, 2017, 78:82.

and facilitating TPRs that benefit certain agencies and users for which it was negotiating, but not including others.⁴ In many instances, the TPR was exclusive to VA, resulting in additional savings for VA, but not other federal agencies. The OIG's review found no authority that would permit VA to award prices on the Federal Supply Schedule for its sole benefit, or one or more other agencies' benefits, while additional users who are authorized by law or regulation lack access to those reduced prices. In short, VA has the authority and obligation to negotiate on behalf of other federal agencies, and it has no authority to award prices on the Federal Supply Schedule for its sole benefit or select agencies' benefits while allowing other federal agencies to be denied a benefit authorized by law. Under the Federal Acquisition Regulation, permanent price reductions cannot be restricted to specific agencies, yet the NAC has facilitated the different treatment of TPRs only under the pharmaceutical schedule. Moreover, the OIG found that no other General Services Administration (GSA) or VA-managed schedules allowed price reductions to be made available to some but not other FSS users. Despite the NAC's claims that TPRs may be offered to FSS users with higher purchase volumes, the OIG did not find that volume was always a factor.

The OIG also determined that, on occasion, VA did not negotiate the terms of a vendor's voluntary TPR and allowed contractors (the pharmaceutical vendors) to set specific restrictions on TPRs. As a result, some government agencies were excluded from the same TPRs on FSS contracts for the same products. The OIG found that this practice has resulted in additional administrative responsibilities for VA and that taxpayers paid an estimated \$602 million more government-wide for pharmaceuticals than if the lowest price reduction was offered to all federal agencies over a two-year period.

The OIG also found TPRs were processed as unilateral modifications, instead of bilateral, which does not conform to standard contracting procedures. A unilateral modification is a contract modification that is signed only by the contracting officer, while a bilateral modification is a contract modification that is agreed to and signed by the contractor and the contracting officer. Furthermore, the supporting documentation for the unilateral modifications sometimes contains confidentiality language from the contractor. The confidentiality language prohibited VA from disclosing the existence and precise amounts of the price reductions to commercial customers and government agencies that did not receive the TPR, despite federal regulation requiring published FSS price lists. The lack of transparency in pricing potentially reduces competition because pharmaceutical vendors do not know they must lower their prices to match other vendors.

⁴ For more information on the NAC and its FSS and national contract programs, see the Office of Procurement, Acquisition and Logistics website, accessed on February 26, 2019, <https://www.va.gov/opal/about/nac.asp>.

During the review, the OIG also identified instances in which TPRs appear to have impaired VA's duty to negotiate and establish the best FSS prices on behalf of all federal agencies, including calculating federal ceiling prices.⁵ By restricting TPRs and keeping them confidential from other federal agencies and the public, the goals and objectives of the FSS program are undermined, and taxpayers are likely to pay more for pharmaceuticals purchased by federal agencies that have not received the benefit of a voluntary vendor TPR or other commensurate price reduction.

What the OIG Recommended

The OIG made four recommendations for the principal executive director and chief acquisition officer at the Office of Acquisition, Logistics and Construction to conduct the following:

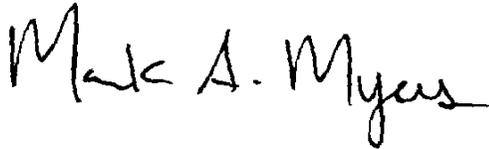
1. Develop and implement a policy that prohibits restricted and agency-specific temporary price reductions on Federal Supply Schedule contracts, including procedures on how to process requests for temporary price reductions to ensure inclusion of all Federal Supply Schedule users.
2. Consult with VA's Office of General Counsel regarding the legality of confidentiality provisions in Federal Supply Schedule contract modifications for temporary price reductions, specifically whether they are consistent with competition requirements contained in the Federal Acquisition Regulation.
3. Develop a written policy for temporary price reductions that exceed one year and are subject to renewal, specifically addressing how such long-term temporary price reductions should be considered when determining fair and reasonable pricing on contract extensions or renewals.
4. Consult with appropriate legal authorities, including the Department of Justice, regarding the legality of unilateral Federal Supply Schedule contract modifications for temporary price reductions.

⁵ Master Agreement and Pharmaceutical Pricing Agreement between the Secretary of VA and the pharmaceutical manufacturers, January 1, 1993. The federal ceiling price is the highest price that manufacturers can charge VA and the agencies for which it negotiates for brand-name drugs. That ceiling price may not exceed 76 percent of the nonfederal average manufacturer price, less any additional discount.

Management Comments

The principal executive director and chief acquisition officer concurred with Recommendations 2–4, and non-concurred with Recommendation 1. The VA’s comments on this report are provided in appendix C. The OIG maintains that VA’s assertions and nonconurrence related to the first recommendation are without legal support and misinterpret VA’s cited authorities. Moreover, nonconurrence with and inaction on Recommendation 1 effectively denies some authorized Federal Supply Schedule users equal access to a duly executed reduction of the FSS contract price, which can result in millions of dollars of additional cost to U.S. taxpayers.

The OIG considers all recommendations open and will follow up on the planned actions until they are completed.

A handwritten signature in black ink that reads "Mark A. Myers". The signature is written in a cursive, slightly slanted style.

MARK A. MYERS
Director, Healthcare Resources Division
Office of Contract Review

Contents

Executive Summary	i
Abbreviations	vii
Introduction	1
Scope and Methodology	6
Results and Recommendations	7
Finding 1: VA Contracting Officials Allowed and Administered TPRs Benefitting Some FSS Users but Not Others	7
Finding 2: Allowing the Exclusion of FSS Users from TPRs Resulted in Taxpayers’ Spending about \$602 Million More for Pharmaceuticals over Two Years	17
Finding 3: Keeping TPRs Confidential Can Reduce Competition for Pharmaceutical Contracts and Is Inapposite to VA’s Responsibility as a Federal Government-Wide Negotiator.....	20
Finding 4: TPRs, Particularly Given Long Term, Can Negatively Impact VA’s Ability to Negotiate and Award Big 4 and FSS Contract Prices.....	23
Finding 5: VA Assumes Risk by Processing Unilateral TPR Modifications	26
Recommendations 1–4.....	30
Management Comments.....	30
OIG Response.....	31
Appendix A: Eligibility to Use GSA Sources of Supply and Services.....	34
Appendix B: Scope and Methodology	49

Appendix C: VA Management Comments51

OIG Contact and Staff Acknowledgments55

Report Distribution56

Abbreviations

Big 4	Department of Veterans Affairs, Department of Defense, Public Health Service/Indian Health Service, and United States Coast Guard
BPA	blanket purchase agreement
CCST	Contract Catalog Search Tool
DoD	Department of Defense
FAR	Federal Acquisition Regulation
FSC	Federal Supply Classification
FSS	Federal Supply Schedule
GSA	General Services Administration
GSAR	General Services Administration Acquisition Regulation
NAC	National Acquisition Center
NDC	national drug code
OALC	Office of Acquisition, Logistics, and Construction
OIG	Office of Inspector General
RFM	request for modification
TPR	temporary price reduction



Introduction

The VA Office of Inspector General's (OIG) Office of Contract Review examined temporary price reductions (TPRs) on pharmaceuticals obtained by federal agencies and other authorized users under Federal Supply Schedule (FSS) contracts.⁶ The purpose of the review was to determine the prevalence, basis, and administration of TPRs and their impact on government-wide contract negotiations when offered by vendors to certain government agencies and not others.

About the Federal Supply Schedule Program

The General Services Administration (GSA) directs and manages the multiple-award schedule program, also known as the FSS. FSS contracts may be awarded to several contractors from a single solicitation. These contracts provide federal agencies and other authorized users with a simplified process of acquiring commercial supplies and services at established fair and reasonable prices.⁷ In January 1981, the GSA delegated authority for negotiating FSS contracts for medical equipment, medical supply, pharmaceutical, and medical service-related schedule programs to VA.⁸ VA has an FSS Service, which manages nine schedule programs and more than 1,700 contracts as of March 2019.⁹ Like GSA, VA issues indefinite-delivery, indefinite-quantity contracts to vendors using full and open competition. The FSS Service awards multiyear, multiple-award federal contracts for use by any eligible federal government agency and other authorized users.¹⁰

The VA FSS contracts are awarded and administered by VA contract specialists and contracting officers located in the FSS Service at the National Acquisition Center (NAC) in Hines, Illinois. The NAC, through the FSS Service and the National Contract Service, establishes and

⁶ The OIG's Office of Contract Review performs preaward, postaward, and compliance reviews. The staff provide other advisory services to the National Acquisition Center (NAC), which is the "contracting activity" within VA that is responsible for contracting and acquisition support related to the healthcare requirements of VA and other federal agencies. According to the Federal Acquisition Regulation (FAR), part 2, sub. 2.1, 2.101, "Definitions," accessed on October 10, 2019, "contracting activity" refers to an agency component designated by the agency head that is delegated broad acquisition authority. VA policy regarding contract reviews are outlined in NAC Procedural Guideline 22, "OIG contract review procedure," June 16, 2015, and VA Acquisition Regulation sec. 842.102, "Assignment of contract audit services," September 25, 2019.

⁷ See appendix A for applicable policy that outlines which users are "authorized."

⁸ FAR part 38, sub. 38.1, 38.000, "Federal Supply Schedule Program," 38.101(d), "General," accessed on October 10, 2019; and FAR part 8, sub. 8.4, 8.402(a), "General," accessed on October 10, 2019.

⁹ FSS Service support is defined under "Schedules," on the FSS website, <https://www.fss.va.gov/>, accessed on April 18, 2019.

¹⁰ State and local governments are among the authorized users, including tribal governments and educational institutions.

administers FSS and national contracts for pharmaceuticals; medical, surgical, and dental supplies and equipment; patient mobility supplies and equipment; prosthetics and orthopedic aids; high-tech medical systems; temporary allied healthcare staffing services; and Prime Vendor distribution programs.¹¹ This report focuses primarily on the activities of the FSS Service.

Establishment of FSS Contract Prices

FSS contract prices are typically negotiated and established based on the vendors' commercial selling practices. The General Services Acquisition Regulation (GSAR) states that the government's objective is to obtain the offeror's best price, also referred to as its commercial most favored customer pricing.¹² In addition, the contracting officer must establish negotiation objectives based on a review of relevant data and determine price reasonableness. When most favored customer pricing is not achievable, the contracting officer must determine that the price is fair and reasonable. The government may use various price analysis techniques to determine a fair and reasonable price.¹³ This includes comparing proposed prices from multiple responses to the solicitation, as well as comparing proposed prices to historical prices paid by the government or another entity.

There are additional pricing requirements for covered drugs, including brand-name drugs.¹⁴ The Veterans Health Care Act of 1992 mandates a statutory federal ceiling price for covered drugs, which is the maximum price manufacturers can charge for a covered drug to the "Big 4" federal agencies.¹⁵ As stipulated in the Act, a pharmaceutical company must compute a federal ceiling price for each national drug code (NDC) of a covered drug based on the nonfederal average manufacturer price (the average commercial price).¹⁶ Annual nonfederal average manufacturer prices are calculated and submitted to VA in November each year to calculate the ceiling prices

¹¹ The associate executive director at the NAC reports to the executive director for the VA Office of Procurement, Acquisition and Logistics, which falls under the VA Office of Acquisition, Logistics, and Construction (OALC).

¹² General Services Acquisition Regulation (GSAR) 538.270-1(c), "Evaluation of offers without access to transactional data," accessed on October 10, 2019.

¹³ FAR part 15, sub. 15.4, 15.404-1(b)(2), "Proposal Analysis Techniques," accessed on October 10, 2019.

¹⁴ The Veterans Health Care Act of 1992, Pub. L. 102-585, § 603, 106 Stat 4974 (1992). As defined by the Act, a covered drug includes insulins, biologicals, innovator single-source pharmaceuticals, and innovator multiple-source pharmaceuticals. (An innovator or brand-name drug is the first drug containing its specific active ingredient to receive approval for use.)

¹⁵ Per 38 U.S.C. § 8126(b) (1992), the Big 4 are VA; the Department of Defense (DoD); the Public Health Service, including the Indian Health Service; and the United States Coast Guard.

¹⁶ The prescribed formula for determining the federal ceiling price is 76 percent of the average commercial price, less any additional discount. An NDC is a unique product identifier used for drugs in the United States. It has 10 digits, divided into three segments. The first segment, the labeler code, identifies the firm that manufactures, distributes, or repackages a drug product. The second segment, the product code, identifies a specific strength, dosage form, and formulation for a particular firm. The third segment, the package code, identifies package forms and sizes.

for the following calendar year. The Veterans Health Care Act also requires a second or dual calculation in the second and subsequent years of a multiyear FSS contract.¹⁷

Manufacturers of covered drugs may elect to charge a different price (dual price) than the federal ceiling price to authorized FSS users other than the Big 4. Dual prices are simply a negotiated price for other government agencies that make up the remaining authorized users of the FSS program. Dual prices are established based on most favored commercial customer pricing negotiations held with the vendors.

Price Reductions

There are two regulations that address price reductions on FSS contracts at different points in the process—one is at the FSS contract level, and the other is when pharmaceuticals are actually ordered. First, the GSAR price reductions clause provides for mandatory price reductions and voluntary government-wide price reductions. Long-term price protection is afforded the government by requiring the FSS contractor and the government to agree on a “commercial tracking customer” (that is, a customer, or category of customers that forms the basis of the contract pricing award) for purposes of price reductions and establishes a ratio between the FSS price and the tracking customer’s price.¹⁸ The contractor is required to maintain that ratio. If the price the contractor charges the commercial tracking customer decreases, the contractor must reduce the price charged to the government to maintain the ratio.¹⁹ The contractor must report all mandatory price reductions to the contracting officer and explain the basis for the price reductions.²⁰

Under this clause, the contractor also may offer a voluntary, government-wide price reduction at any time during the contract period.²¹ These voluntary price reductions can be permanent or temporary (TPR). A TPR typically represents a vendor’s voluntary reduction in price for a

¹⁷ Under the dual calculation, a maximum ceiling price (FSS Max Cap) is calculated by increasing the price on the manufacturer’s FSS contract on September 30 of the current year by the percentage change in the Consumer Price Index-Urban for the preceding year. The statutory federal ceiling price for the following calendar year is the lesser of 76 percent of the average commercial price submitted by the manufacturer or the FSS maximum ceiling price.

¹⁸ GSAR, 552.238-81, “Price Reductions Clause,” accessed on October 10, 2019. The basis of award refers to the customer(s) on which pricing was based.

¹⁹ If the tracking customer price increases, then contractors may request price increases under certain conditions, per GSAR 552.216-70, “Economic Price Adjustment,” accessed on October 10, 2019. The government then reserves the right to (i) accept the contractor’s price increase; (ii) negotiate more favorable discounts; or (iii) remove the product from the contract if the requested increase is not supported.

²⁰ GSAR 552.238-81(b), “Price Reductions Clause,” accessed on October 10, 2019.

²¹ GSAR 552.238-81(e), “Price Reductions Clause,” accessed on October 10, 2019.

defined period of time. The contracting officer must modify the FSS contract to reflect any price reductions under the price reductions clause.²²

Second, contractors can provide on-the-spot discounts upon ordering.²³ “Ordering activities” for authorized FSS users (that is, the agency’s acquisitions entities) may request a price reduction at any time before placing an order or establishing a blanket purchase agreement (BPA).²⁴ If this occurs on a specific order or BPA, the contractor is not required to pass on the price reduction to all FSS users. The FSS contract price would remain the same. There is no requirement for an FSS vendor to modify the FSS contract to offer spot discounts at the time of order because the FSS price has not changed.

In addition to the price reductions provided for by regulation, at the time of this review the NAC permitted voluntary TPRs for pharmaceuticals to be offered to all FSS users or to be restricted to only certain FSS users (i.e., not government-wide). These price reductions differ from spot discounts because they are offered to the FSS Service (not the ordering activity) and are not made in connection with a specific order or BPA. If a TPR is restricted so that some FSS users are excluded, the permanent FSS contract price is applied to all other users. In contrast, the NAC does not permit restricting *permanent* price reductions to only certain federal agencies (other than the Big 4 federal agencies defined in the Veterans Health Care Act).

Administration of FSS Contracts – Price Modifications

The FSS Service at the NAC negotiates, awards, and administers the nine VA-managed schedule contracts, including processing price reductions. All price reductions, excluding spot discounts at the time of ordering, must be submitted via a modification to the FSS contract. Modifications are either unilateral or bilateral, and can be for additional items, deletions, or price reductions.²⁵ Contractors must electronically submit a properly prepared request for modification (RFM) form to modify their FSS contract to incorporate requested permanent or temporary price reductions. Any contract modification package that the FSS Service receives and determines is not current, accurate, and complete is returned immediately to the contractor without further consideration. If the modification is returned without further consideration, the contractor is encouraged to correct any identified deficiencies and resubmit the modification package using the same process. The

²² GSAR 552.238-81(g), “Price Reductions Clause,” accessed on October 10, 2019.

²³ FAR part 8, sub. 8.4, 8.405-4, “Price Reductions,” accessed on October 10, 2019.

²⁴ FAR part 8, sub. 8.4, 8.401, “Definitions,” accessed on October 10, 2019. ‘Ordering activity’ means an activity (acquisitions component of an agency) that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts.” FAR part 8, sub. 8.4, 8.405-3, “Blanket Purchase Agreements (BPAs),” accessed on October 10, 2019. A BPA is an agreement established by the government with an FSS contractor “to fill repetitive needs for supplies and services.”

²⁵ GSAR 552.238-82, “Modifications,” accessed on October 10, 2019.

FSS Service evaluates all modification requests in accordance with the price reductions clause to determine whether the tracking customer ratio has been disturbed.

All permanent and temporary price modification requests are processed by a separate team in the FSS Service. Although a contractor has an assigned VA contract specialist, that specialist might not be the person assigned to process the contractor's price-reduction modification request package. In that case, the contractor will be directed to work with the specially assigned contract specialist for each specific price-reduction modification request.

Scope and Methodology

In May 2017, prior to beginning this review, the OIG's Office of Contract Review issued a preaward review of an FSS proposal submitted by a pharmaceutical vendor to VA. During the review, the OIG found variable TPRs that were restricted to certain FSS users, with the lowest TPR price given only to VA. The TPRs were set to expire when the FSS contract that was in effect expired and would not necessarily be applied to the new contract under consideration (and could be cancelled at any time). The potential expiration of the TPR represented a significant financial risk to VA. The OIG shared its concerns with VA regarding TPRs and their effect on determining fair and reasonable FSS prices. Because those concerns were ignored, the OIG decided to analyze the overall prevalence of TPRs in FSS pharmaceutical contracts. In May 2018, the OIG performed a preliminary review of pharmaceutical prices that confirmed TPRs are not offered consistently or uniformly to all FSS users. Based on this prior work and related interviews with contracting officials, the OIG initiated this more expansive review to determine the prevalence, basis, administration, and impact of restricting TPRs under FSS contracts.

The Office of Contract Review's special projects team conducted this review from May 2018 through November 2018. The scope of the review focused on all NDC for items on FSS contracts under the pharmaceuticals and drugs schedule (Federal Supply Classification [FSC] Group 651B, Drugs, Pharmaceuticals, and Hematology Related Products), with temporary prices that were not offered to all authorized FSS users from January 1, 2016, through December 31, 2017.²⁶ To accomplish this, the OIG examined the NAC pharmaceutical pricing database for the same two-year period. The pricing database included all permanent and temporary FSS contract prices for pharmaceutical items. The OIG identified a total of 1,343 NDCs in the database with temporary prices and found 670 NDCs assigned to particular pharmaceuticals that had TPRs not offered to all authorized users.²⁷ These 670 pharmaceuticals and drugs represented 73 distinct FSS contracts. In addition, the team analyzed all sales to government agencies for the relevant NDCs for the same period to determine the monetary impact of excluding FSS users from TPRs, rather than offering TPRs to all authorized FSS users. Finally, the team conducted interviews with FSS contracting officials, pharmacy consultants at Pharmacy Benefits Management, and personnel at GSA. For more information on the methodology, see appendix B.

²⁶ FSC Group found under "schedule 651B drugs" on the Office of Procurement, Acquisition and Logistics website, accessed on October 9, 2019. <https://www.va.gov/opal/nac/fss/pharmaceuticals.asp>

²⁷ Temporary prices in the NAC pharmaceutical pricing database may include provisional or temporary federal ceiling prices, in addition to manufacturers' voluntary TPRs. The database does not distinguish between different types of temporary prices. This did not materially affect the OIG's findings because provisional or temporary federal ceiling prices are only in place for a short time.

Results and Recommendations

Finding 1: VA Contracting Officials Allowed and Administered TPRs Benefitting Some FSS Users but Not Others

The FSS Service at the NAC is responsible for procuring pharmaceuticals and other medical supplies for all FSS users through GSA’s delegation of authority to VA.²⁸ The OIG found the NAC routinely issued modifications to pharmaceutical FSS contracts that specifically awarded lower prices in the form of TPRs for the sole benefit of VA or certain other FSS users, effectively excluding other authorized FSS users from those prices. The OIG found that the NAC does not have the authority to limit or deny FSS users that are authorized by law, regulation, or policy access to an FSS contract, an item or service on an FSS contract, or a price on an FSS contract.

The OIG team’s analysis showed that when TPRs were restricted to certain agencies, VA typically was one of the agencies that benefited from the price reduction (see figure 1). The OIG analyzed the 670 NDCs with TPRs restricted to only some agencies or users and determined VA was included in the offered TPR for 525 (78 percent) of these NDCs but excluded for the remaining NDCs. The OIG further found 259 of the 525 NDCs (49 percent) had TPRs offered to VA *only* and no other agency. For these 259 pharmaceuticals, all non-VA FSS users paid the higher Big 4 or FSS/other government agency price.

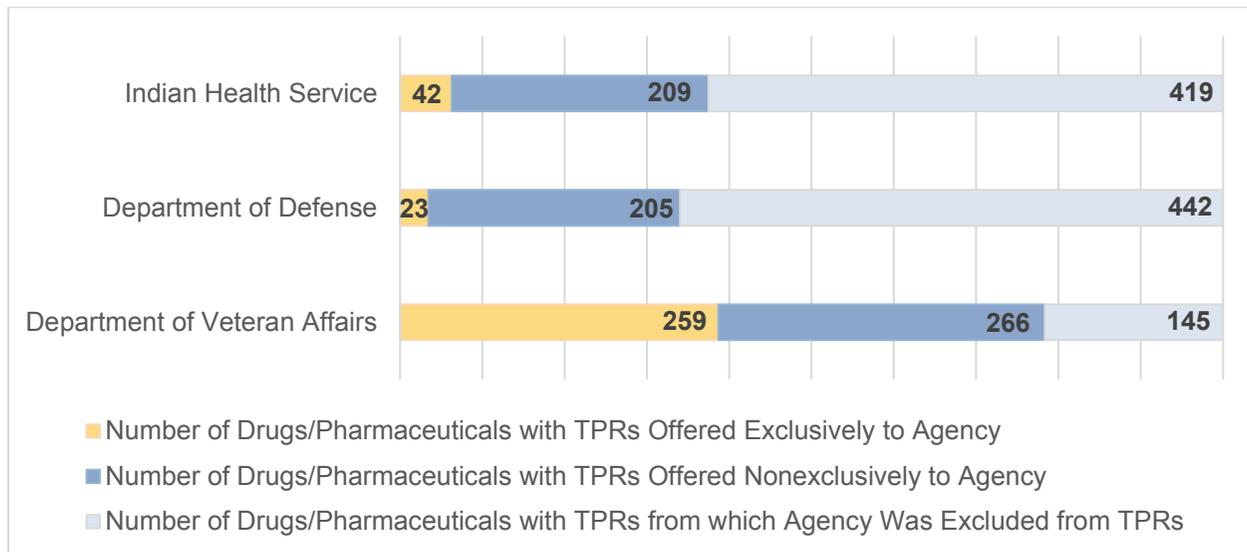


Figure 1. Number of drugs/pharmaceuticals with TPRs restricted to certain government agencies
Source: VA OIG analysis of TPRs restricted to certain government agencies, December 18, 2018

²⁸ FSS Service support is defined on the FSS website, accessed on April 25, 2019, <https://www.fss.va.gov>.

The largest federal agency and authorized FSS user second to VA is the Department of Defense (DoD). The OIG determined DoD was included in the offered TPRs for only 228 of 670 NDCs (34 percent) for the specified drugs. Twenty-three of the 228 NDCs had TPRs restricted to DoD *only*. This contrasts substantially to the 259 NDCs with TPRs restricted to VA only.

The OIG also found, as figure 1 reflects, that the Indian Health Service was offered TPRs (exclusive and nonexclusive) for 251 of 670 NDCs (37 percent), but only 42 had TPRs restricted to the Indian Health Service only. Although a much smaller agency than VA or DoD, pharmaceuticals are a significant part of the Indian Health Service budget. There were many instances in which DoD and the Indian Health Service were excluded from a TPR processed by VA contracting officers, but another agency, usually VA, was offered the price reduction and benefited significantly from the additional savings.

The OIG not only found that TPRs were restricted to certain agencies, but that even among the agencies receiving these price reductions, the amount of the discount differed. The OIG found many NDCs had at least two levels of TPRs. For example, the OIG found one contractor that offered five TPRs on a single drug (see figure 2). Six agencies were offered a TPR of some sort, while all other FSS users paid the full FSS price.²⁹

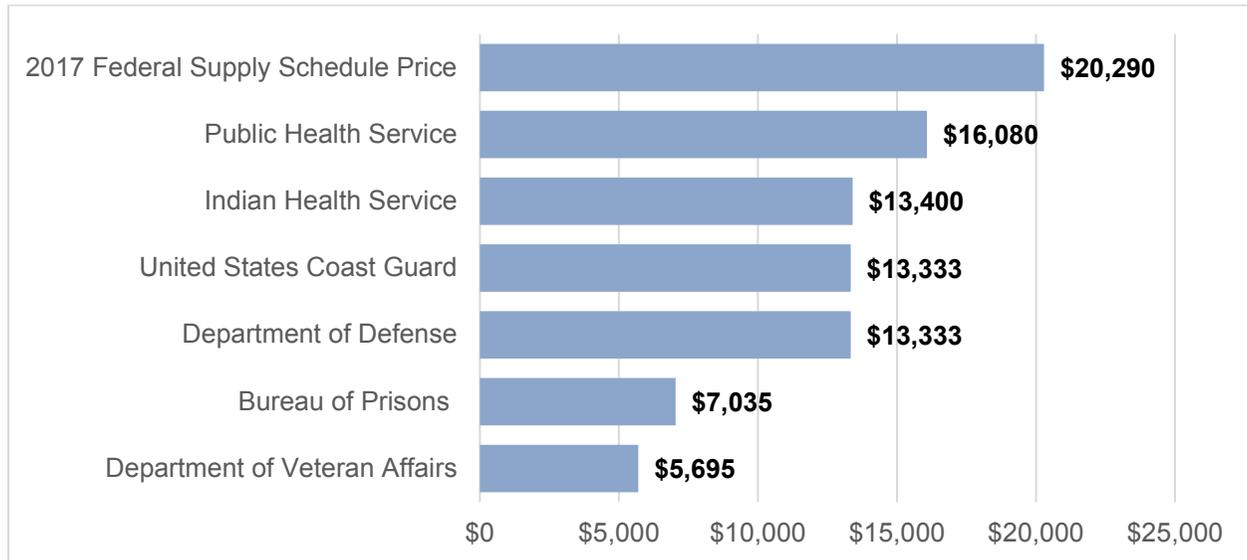


Figure 2. TPRs for a single unit of the same drug

Source: VA OIG analysis of TPRs for a single unit of the same drug, December 18, 2018

Based on the different TPRs offered to the various agencies, the price DoD paid was more than double the price VA paid, while the price to the Public Health Service was almost three times the price VA paid. Although the contractor offered a TPR to all six agencies, the price reductions were not equal. The FSS Service at the NAC, acting pursuant to its delegated authority from

²⁹ The same TPR was offered to two of the agencies.

GSA to administer FSS contracts on behalf of the entire government, processed each of these TPRs, and by doing so helped to deny some FSS users the right to contract prices. Of note, the TPR offered to and processed by VA was significantly better than the TPR offered to the other five agencies. Because of the differing TPRs, some authorized FSS users paid much higher FSS prices than other FSS users—and in cases in which confidentiality clauses were accepted by VA, the agencies paying higher prices might have been unaware they were doing so.

As stated earlier, VA was included in the offered TPR for 525 of 670 NDCs reviewed, and 259 of those were to VA only. For the remaining 266 NDCs that included VA, at least one other agency was also offered the TPR, but VA received the lowest TPR for 71 of those. The VA not only benefits from more exclusive TPRs offered by pharmaceutical vendors, but the OIG found VA generally also benefits from the lowest prices when TPRs are offered to multiple agencies.

The OIG attempted to determine why contractors offer significantly different TPRs to different agencies. In interviews, FSS Service and Pharmacy Benefits Management officials speculated that TPRs are offered to the agencies that purchase the greatest volume; however, both types of officials could not provide any support for their speculation because VA does not require FSS vendors to provide any reason for offering a TPR or why they desire to offer the TPR to only certain FSS users.

The FSS program was designed to provide federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying.³⁰ GSA delegated the responsibility to VA for negotiating and administering FSS healthcare schedules on behalf of the entire federal government. The goal of the FSS Service is to leverage the entire federal government's purchasing power to drive volume-based discounts that provide healthcare solutions at fair and reasonable prices to all authorized FSS users.³¹ By allowing FSS contractors to provide reduced prices to only those individual agencies that purchase large quantities, the NAC is acting contrary to that goal. Instead of leveraging the entire federal government's purchasing power to achieve low prices for all authorized purchasers, it allows federal agencies with higher volume purchases to take advantage of lower prices to the exclusion of other federal government agencies. Additionally, VA has no legal authority to make determinations of access for authorized FSS agencies and users. VA's authority is merely the delegated authority that GSA granted to it. Based on the OIG team's review, the FSS Service regularly processes TPRs that provide significant benefit only to VA, or to VA and a small number of other agencies. Appendix A lists all authorized FSS users, many of which have been excluded from the TPRs processed by VA.

³⁰ FAR 8.402(a), "General," accessed on October 10, 2019.

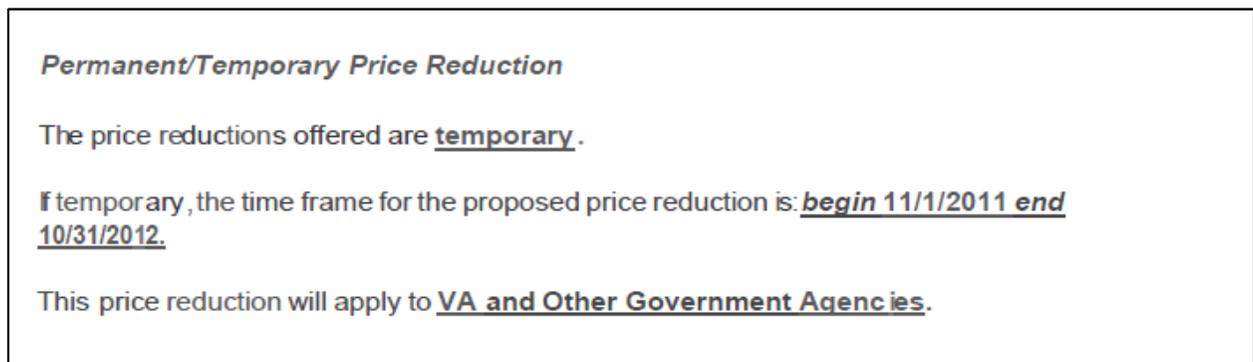
³¹ FAR 38.000, "Scope of part," 38.101(d), "General," 8.402(a), "General," and 8.404(d), "Use of Federal Supply Schedules," accessed on October 10, 2019.

VA's Request for Modification Form Allows Vendors to Exclude Some FSS Users from TPRs

FSS contractors request modifications to their contracts by submitting a request to VA.³² For most modifications, the contractor must submit a request with the proposed change and provide the rationale. In April 2016, the FSS Service streamlined the process for permanent and temporary price reductions for the relevant pharmaceutical solicitation.³³ The new format for TPRs allows VA to unilaterally modify the contract.

When submitting a “Price Decrease RFM [Request for Modification]” form, the contractor using the new format must indicate whether the price decrease is permanent or temporary. If it is a temporary price reduction, a beginning and end date are entered, and the contractor can select which agencies will benefit from the TPR. The form is electronically submitted to the NAC FSS Service, and a contract specialist is assigned to process the price change. The assigned contract specialist may or may not be the same specialist responsible for administering the FSS contract.

The request for modification form was revised by the FSS Service several times between 2011 and 2014, increasing the level of detail and the flexibility with which the vendor can direct the price decrease. The increased flexibility in the form has made it easier for contractors to target TPRs to only certain FSS users, rather than ensuring the entire government can benefit from the additional savings offered by the vendor. In 2011, contractors were given a basic form with only fill-in blanks (see figure 3).



Permanent/Temporary Price Reduction

The price reductions offered are temporary.

If temporary, the time frame for the proposed price reduction is: begin 11/1/2011 end 10/31/2012.

This price reduction will apply to VA and Other Government Agencies.

Figure 3. Price decrease RFM form, 2011

Source: VA OIG obtained the RFM form from the Enterprise Contract Management System, accessed on September 21, 2018

³² GSAR 552.238-82, “Modifications,” accessed on October 10, 2019.

³³ FSC Group 65, part I, sec. B.

Checkboxes Added to Designate Recipients

In 2012, checkboxes were added for VA, DoD, Bureau of Prisons, Indian Health Service, and “Other” (see figure 4). Therefore, the selection of government agencies that could be offered the TPR highlighted only four specific agencies for receiving reduced pricing.

3. Indicate below if the reduced pricing is limited to specific eligible users of the FSS program.

No

Yes

If yes, indicate below the specific agencies entitled to the reduced price by checking the appropriate box. Check all that apply.

VA	DoD	BOP	IHS	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VA only
VA, IHS, and State Veterans Homes Option 1

Legend:
VA = VA facilities, CMOPs, and Option 2 State Veterans Homes and FHCC; DoD = Department of Defense, DLA and FHCC; BOP = Bureau of Prisons; IHS = Indian Health Service; FHCC = Federal Healthcare Facilities

Figure 4. Price decrease RFM form, 2012

Source: VA OIG obtained the RFM form from Enterprise Contract Management System, accessed on September 21, 2018

In reviewing request for modification forms since 2011, the OIG observed handwritten notes requesting clarification from the contractors on the group(s) eligible for the TPR. According to FSS contracting officials interviewed, the form was continually revised to accommodate contractors’ requirements and ensure pricing was processed correctly. Since 2014, there have been 11 checkboxes (see figure 5). The request for modification form allows for specific agencies to be designated as recipients of the TPR.

42-2A Permanent/Temporary Price Reduction
 Choose either Option A for permanent price reductions or Option B for temporary price reductions.

A. This permanent price reduction will apply to:

- All FSS Users: BIG4 and OGA (selection for single or dual pricing)
- BIG4 Only: VA, DOD, PHS including IHS, Coast Guard
- Other Government Agencies (OGA) Only (selection for dual pricing only)

B. This temporary price reduction is offered to the following agency/agency groups for the time frame of
 Begin _____ End _____ :

- All FSS Users: BIG4 and OGA (selection for single or dual pricing)
- BIG4 Only: VA (VA, CMOP, SVH2, 3, 4, & FHCC), DOD (DOD, TMOP, & FHCC), PHS (PHS & IHS), and Coast Guard
- Other Government Agencies (OGA) Only
- Specific Agencies/Agency Groups Only (identified below)

VA (VA, CMOP, SVH 2,3,4, & FHCC)	BOP	DOD (DOD, TMOP, & FHCC)	DHS	PHS & IHS	IHS	HHS	NIH	SVH1	SVH (SVH 1, 2, 3, & 4)	USCG
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Figure 5. Price decrease RFM form, 2018

Source: VA OIG obtained the RFM form from the Enterprise Contract Management System, accessed on September 21, 2018

Note: Consolidated Mail Outpatient Pharmacy (CMOP), Department of Homeland Security (DHS), Federal Health Care Center (FHCC), Tricare Mail Order Pharmacy (TMOP), Department of Health and Human Services (HHS), and National Institutes of Health (NIH)

Of note, the NAC has been inconsistent in its treatment of temporary and permanent price reductions. The request for modification form does not allow specific agency designations for permanent price reductions because they must be offered to all FSS users, except as dictated by the Veterans Health Care Act (see figure 5). However, the NAC does not require the same for TPRs and treats them differently from all other permanent or nonvoluntary price reductions. Lower prices triggered by the price reductions clause are applied to all FSS users. The price reductions clause does not permit “tracking customer” price changes to apply to only certain FSS users. However, the NAC has applied restrictions to only one section of the clause—*voluntary* price reductions—and only if they are *temporary*.

The OIG requested additional information from the FSS Service as to why the request for modification form was revised to include options to designate TPRs for select agencies and why TPRs are not treated the same as permanent price reductions. The FSS Service could not provide any historical context or rationale for the revisions but stated, “the TPR modification request provides a means for discounts to be applied directly to the customer segment as done in commercial pricing.” The FSS Service officials interviewed stated TPRs resemble commercial

pricing practices, and pharmaceutical pricing is based on customer categories, such as the Big 4 under the Veterans Health Care Act. The FSS Service claims the structuring of TPRs and the requisite form for modification allow for similar customer segmentation, so additional discounts are applied directly to the targeted customer segment. However, this approach seems contrary to one of the objectives of the FSS program, which is to achieve discounts based on the purchases of the entire federal government. Making discounts available only to certain agencies undermines that goal. If a contractor wanted to target a certain FSS customer, it could offer spot discounts upon ordering.³⁴ With spot discounts, the contractor is not required to pass on the price reduction to all FSS users. In addition, the contractor would not be required to modify the FSS contract to the exclusion of certain FSS users. It is not necessary to modify the FSS contract and exclude authorized FSS users if the contractor's goal is to provide additional discounts to certain government customers.

The OIG found that other VA-managed schedules, such as the one for medical equipment and supplies, and GSA-managed schedules do not have the option of restricting TPRs to certain FSS users. On these other schedules, TPRs are treated the same as permanent price reductions and are offered to all authorized FSS users. No authorized agency can be specifically excluded. These other schedules are not subject to different rules nor otherwise distinct from the pharmaceutical schedule at issue (FSC Group 65IB). The FSS Service's practice of allowing the exclusion of authorized FSS users from TPRs is reflected in its revisions to the requisite contract modification form, which facilitate this differential treatment for pharmaceuticals.

No Explanation Required for Contractors to Exclude FSS Users from TPRs

The price decrease request for modification form allows the contractor to designate specific agencies to receive the TPR. The form also contains a section for the contractor to provide a justification or narrative describing the rationale for requesting the price reduction.³⁵ Contractors and the FSS Service are not *required*, however, to provide a rationale for TPRs, including those that benefit only select agencies. The OIG's review of a sample of these forms revealed that the justification was often left blank or only stated it was a voluntary price reduction. While some contracting officers may ask for a reason for the TPR, others do not.

During OIG team interviews, FSS Service and Pharmacy Benefits Management officials speculated that the reason VA is offered TPRs more than other agencies is due to differing customer bases. Because contractors do not give explanations, and VA does not always ask, this could not be confirmed. Some FSS and Pharmacy Benefits Management officials interviewed

³⁴ FAR 8.405-4, "Price reductions," accessed on October 10, 2019.

³⁵ In this context, the contractor is requesting that VA modify the contract to reflect the contractor's offer of the TPR.

believe that, because each agency has its own patient population, it does not necessarily make sense for contractors to offer TPRs to every agency equally. For example, if a drug is primarily used for geriatric patients, VA would likely be the primary purchaser, not an agency like DoD, which overall has a younger patient population. Pharmacy Benefits Management officials also speculated that TPRs are given to increase market share within a customer group. Even if this is the case, contractors could offer spot discounts when orders are placed to achieve this purpose, rather than modify the pricing of an FSS contract in a manner that purposely excludes certain authorized FSS users.

In the OIG team's review of select contract files, the team found evidence that TPRs are sometimes given to avoid a permanent price decrease that would impact the contractor's dual calculation price. For example, because the dual calculation (FSS Max Cap) FSS contractors must perform in second and subsequent years for covered drugs is based on the contractor's FSS contract price on September 30, lowering the price in one year would decrease the maximum price the contractor could charge in the following year. One contractor explicitly stated in an email to the contracting officer, "if we lower the [FSS] price to the [most favored customer price] that will be the starting price for the [federal ceiling price] next year."

The FSS Service believes TPRs are voluntary and FSS Service staff do not typically request additional information on why a TPR is being given; they simply accept and process the offer. The individuals at the FSS Service the OIG interviewed said they did not want to force contractors to provide explanations since they believed that doing so may result in losing the TPR and the associated cost savings. Although the request for contract modification form has a designated area to provide a justification for the TPR, in OIG interviews, contract specialists repeatedly said that TPRs are voluntary and, therefore, no justification is necessary. The NAC does not usually negotiate any TPRs offered by contractors. In practice, the treatment of TPRs varies from one contract specialist to another—some ask questions regarding the TPR and others simply process the modification. However, the OIG finds that the NAC is obligated to administer FSS prices on behalf of all authorized FSS users; therefore, it is also obligated to perform its due diligence and request justification if changes to the FSS contract result in unequal treatment of FSS users. While TPRs are offered voluntarily by contractors, the NAC can and should negotiate the terms of the TPR.

As stated earlier, accepting TPRs only for VA deprives other agencies of the benefit of the government's buying power. As a result, other agencies are paying a higher price for pharmaceuticals without VA or the contractor providing any justification for the difference.

VA Should Not Restrict FSS Price Reduction to Particular Users, Although Specific Regulatory Authority Is Silent on Whether It Is Prohibited or Permitted

The OIG did not find any policy or regulation that *specifically prohibits* the FSS Service from allowing contractors to exclude FSS users from voluntary TPRs, and there is no policy guidance or regulatory authority that *specifically permits* restricting TPRs to certain FSS users. Although there is a lack of specific policy language on this practice, the law is clear that it is a prohibited practice.

VA was designated the authority to award and administer medical-related FSS contracts for the use of the entire federal government and other authorized users.³⁶ This authority encompasses VA's obligation to leverage the government's buying power and ensure FSS prices are available to all FSS users. Failing to leverage that buying power flies in the face of the authority granted to VA. Moreover, although VA was given the authority to make contract awards for the entire federal government, it was not given authority to facilitate denying agencies in the government access to a price in an FSS contract. Given the authority of VA to make contract awards for all authorized users, and the lack of authority to allow the exclusion of other agencies, VA cannot facilitate the exclusion of other agencies from vendors' temporary price reductions.

Accepted contracting practices support the conclusion that VA should not exclude other agencies from TPRs. For example, permanent price reductions cannot be restricted to specific agencies, and no rationale exists for a different treatment of TPRs under the pharmaceutical schedule. The OIG found that no other VA or GSA-managed schedules allow restricted TPRs except for the pharmaceutical schedule. In addition, the price reductions clause specifically states that contractors may offer voluntary, "Governmentwide" price reductions. NAC and GSA officials agree that, under that clause, permanent price reductions on FSS contracts cannot be restricted to certain FSS users; however, NAC officials failed to provide any justification for treating TPRs differently.

As support for the NAC's practice of permitting restricted TPRs, some contracting officials at the NAC and GSA, when interviewed, cited a provision of the Federal Acquisition Regulation that permits a contractor to provide spot discounts from FSS prices at the time of an order.³⁷ This argument does not support restricted TPRs because the provision cited does not contemplate discounts offered to GSA or the NAC that are processed as modifications to the FSS contract itself. Rather, the provision is limited to discounts offered to "an ordering activity" at the time of the order. The spot discount argument, in fact, further supports the OIG's finding that no authority exists for allowing variable TPRs in FSS contracts. In particular, the provision

³⁶ FAR 38.000, "Scope of part," 38.101(d), "General," and 8.402(a), "General," accessed on October 10, 2019.

³⁷ FAR 8.405-4, "Price reductions," accessed on October 10, 2019.

demonstrates that GSA and the Federal Acquisition Regulatory Council only anticipated and provided for agency-specific discounts (in addition to the permanent FSS contract discount) at the time of order. The General Services Acquisition Manual (GSAR 552.238-81) also provides guidance for processing modifications related to price reductions, and it has no allowance for price reductions to be limited to only certain authorized FSS users. The price reductions clause itself makes no allowance nor provides any indication that GSA or VA can award price reductions that are for the sole benefit of select FSS users when price reductions are voluntary and temporary. The OIG could not find, nor could VA officials identify, any regulation or policy in FAR or GSAR part 538 that allows, provides for, anticipates, or otherwise authorizes modifying FSS contracts to the benefit of only certain FSS users while excluding others.

Allowing Exclusions of FSS Users to Facilitate TPR Processing Undermines Other Federal Contracting Responsibilities and Efficiencies by VA

In addition to thwarting the policy of leveraging the government's buying power to achieve the best government-wide pharmaceutical pricing, allowing some FSS users to be shut out of TPRs increases VA's administrative burden in tracking the many different TPRs. While the various changes to the form requesting price reductions may have facilitated easier processing of TPR modifications and reduced administrative confusion in designating which agencies receive TPRs, it encourages restrictions and varying levels of discounts on TPRs. By giving contractors the option of offering a TPR to specific FSS users, the burden to manage multiple prices falls on VA's NAC. The OIG analyzed TPRs by contract number and found some FSS contracts had a significant number of contracted items with TPRs. For example, one FSS contract had a total of 122 items, and more than 50 percent of the items on contract had TPRs. The OIG found this same FSS contract had 92 contract modifications between its award in April 2015 and June 2018, of which 36 were related to TPRs. Fifteen of the 36 modifications were TPRs provided to VA only. The OIG also found there were a significant number of price modifications linked to offering different TPRs to different agencies. For one FSS contract, seven different forms were submitted because separate TPRs were offered to VA and the Indian Health Service. According to the NAC, TPR modifications account for 30 to 40 percent of all modifications processed by the FSS Service. Despite the FSS Service decreasing processing times for TPR modifications, processing this volume of modifications for TPRs does represent an administrative burden on the NAC.

The contractor has little administrative responsibility for managing multiple TPR prices to different agencies. The NAC and Pharmaceutical Prime Vendors bear the administrative burden to ensure the correct TPR is given to the correct FSS users at the correct time. The fact that there is little administrative burden to FSS contractors to elect numerous TPRs on its FSS contracts may be a factor in the contractors opting for multiple and variable TPRs. As mentioned

previously, FSS vendors could still offer agency-specific or customer-specific pricing at the time of order, which would eliminate the administrative burden from VA.

Finding 2: Allowing the Exclusion of FSS Users from TPRs Resulted in Taxpayers' Spending about \$602 Million More for Pharmaceuticals over Two Years

The OIG found that facilitating the exclusion of some FSS users from TPRs resulted in those authorized FSS users paying more for pharmaceuticals than other authorized FSS users. VA processed TPRs under the FSS contract, which allowed FSS vendors for the pharmaceutical schedule to charge certain authorized FSS users a higher contract price even though GSA authority makes no such provision. To determine the monetary impact of restricting TPRs and excluding certain agencies, as well as offering different TPRs to different agencies, the OIG requested and received VA and DoD's Pharmaceutical Prime Vendor sales data for January 1, 2016, through December 31, 2017. The OIG limited the analysis to the 670 NDCs with temporary prices that were not offered to all FSS users (restricted to certain agencies). This included instances where a TPR was only offered to Big 4 users. The OIG review examined total sales to government agencies of \$8.3 billion. Approximately 57 percent of those sales were to VA, and 37 percent were to DoD.

For all 670 NDCs, the OIG compared the actual price paid by an FSS customer to the lowest TPR on the FSS contract at the time of order. If the FSS customer paid more than the lowest TPR being offered at that time, the OIG calculated the difference in unit price and multiplied by the quantity purchased to determine how much the FSS user paid over the lower TPR.³⁸

As table 1 demonstrates, the OIG determined that taxpayers paid \$602,877,685 more than the lowest TPR during the two-year review period. The OIG found approximately 85 percent of that spending (\$515,165,442 of the \$602,877,685) was a result of DoD being excluded from the TPR altogether or receiving a smaller price reduction than another agency. The OIG found 54 of the 670 NDCs with temporary prices did not have any dollar impact (the pricing was the same as the lowest TPR). The remaining 616 NDCs did cost taxpayers some amount more than the lowest TPR due to that TPR not being offered to all agencies, or different TPRs being offered. The OIG acknowledges certain agencies, especially VA, have benefitted from TPRs and received substantial cost savings as a result. However, the OIG team's analysis shows there is a significant monetary impact on and lost savings to the government as a whole when TPRs are allowed to be restricted to only certain FSS users. While VA has received significant savings, other government agencies also could have received substantial savings had they been given the

³⁸ The OIG recognizes that vendors can voluntarily offer a TPR higher than the lowest price, but there was no evidence that VA analyzed whether a higher price would be offered government-wide or whether the savings from current TPRs would have been more beneficial across all federal agencies than some other offered TPR to all eligible FSS users. The lowest TPR provides a starting point to determine estimates of impact.

same TPRs. The OIG recognizes that TPRs are voluntarily offered by contractors and there is no requirement for them to offer TPRs at all. However, VA has the responsibility to ensure any price modifications to FSS contracts are processed for all FSS users and to carry out their designated authority to negotiate FSS prices for all eligible users “government-wide.” Table 1 summarizes the total dollar impact by agency based on comparing the price paid by the agency (specifically each FSS customer) and the lowest TPR offered to any agency at the time of sale, multiplied by the units purchased. DoD’s share of the impact was highest.

Table 1. Dollar Impact of Excluding Authorized FSS Users from TPRs

January 1, 2016, through December 31, 2017

Agency	Amount agency paid above the lowest available TPR (\$)	Agency’s share of impact (%)
Department of Defense	515,165,442	85
Indian Health Service	42,718,411	7
Department of Veteran Affairs	38,451,406	6
Department of Health	3,463,937	1
Department of Health and Human Services	2,162,837	0
State Veteran Homes 1	241,477	0
Bureau of Prisons	192,172	0
Public Health Service	116,028	0
Federal Health Care Center	113,659	0
Division of Immigration Health Service	97,370	0
State Veteran Homes 2	59,165	0
United States Coast Guard	47,607	0
Immigration and Customs Enforcement (ICE) Health Service Corps	16,461	0
District of Columbia	14,619	0
Peace Corps	7,945	0
National Aeronautics and Space Administration	4,232	0
Howard University (including Hospital)	3,009	0
Department of State	1,376	0
Federal Correctional Institution	516	0
Department of Homeland Security	16	0
Total	\$602,877,685	100%

Source: OIG analysis based on actual prices paid on 616 items compared with lowest TPR

The Impact of VA Allowing Government Agencies to Be
Excluded from Temporary Price Reductions on FSS Pharmaceutical Contracts

Note: State Veteran Homes 1 are eligible for FSS prices but not for federal ceiling prices, and State Veteran Homes 2 are eligible for federal ceiling prices. Department of Health represents various state agencies and is separate from HHS

Table 2 summarizes information on the top 10 products (pulled by NDCs) with the highest monetary impact and demonstrates the variability of TPRs and FSS prices offered to different agencies. The item with the highest dollar impact was a result of TPRs offered to VA, Public Health Service, Indian Health Service, and Coast Guard, but not DoD. As highlighted in that table, for this pharmaceutical, VA was offered a TPR that reduced the price to \$725.49 per unit, while Public Health Service, Indian Health Service, and Coast Guard paid \$773.86 per unit. While these agencies received different TPRs, DoD did not benefit from a TPR and paid the Big 4 price of \$1,662.64 per unit in 2016 and \$2,018.85 per unit in 2017. DoD paid more than double the unit price paid by the other agencies. As a result, DoD paid \$76,655,063 more than it would have if it had received the VA TPR price. As noted earlier, some contracting officials have argued VA received favorable TPRs because it purchased significantly higher volumes or was the primary purchaser of an NDC. But that cannot explain the disparate treatment of DoD for this NDC. Here, VA purchased 133,307 units and DoD purchased 68,934 units. However, Indian Health Service purchased just 8,819 units, yet was offered a TPR.

Table 2. Top 10 Pharmaceuticals with the Largest Dollar Impact and TPR Prices

Pharmaceutical/ drug	2017 Big 4 price	2017 Federal Supply Schedule price	VA TPR	DoD TPR	Public Health Service TPR	Indian Health Service TPR	Bureau of Prisons TPR	United States Coast Guard TPR
1	\$2,018.85	\$2,088.63	\$725.49	No TPR	\$773.86	\$773.86	No TPR	\$773.86
2	\$262.05	\$262.05	\$46.89	No TPR	No TPR	\$46.89	No TPR	
3	\$2,000.93	\$2,088.63	\$725.49	No TPR	No TPR	\$773.86	No TPR	\$773.86
4		\$512.27	\$137.67	No TPR	No TPR	No TPR	No TPR	No TPR
5	\$437.90	\$437.90	No TPR	\$81.34	No TPR	No TPR	No TPR	\$91.10
6	\$130.52	\$130.52	\$52.51	No TPR	No TPR	No TPR	No TPR	No TPR
7	\$221.85	\$222.63	\$89.70	No TPR	No TPR	\$125.43	No TPR	No TPR
8	\$208.54	\$235.73	\$82.80	No TPR	No TPR	\$82.80	No TPR	No TPR
9		\$170.53	\$45.89	No TPR	No TPR	\$57.08	No TPR	No TPR
10		\$175.13	\$45.89	No TPR	No TPR	\$71.95	No TPR	No TPR

Source: VA OIG summary of pharmaceutical data from the Enterprise Contract Management System, accessed on September 28, 2018

Note: "No TPR" means the agency was not offered a TPR and paid the 2017 Big 4 or FSS price

The item with the next highest dollar impact (\$62,521,662) was a result of a TPR for a pharmaceutical product provided to VA and Indian Health Service only. They paid \$46.89 per unit, while all other FSS users paid \$262.05. While one could argue these two agencies were

offered a TPR because they were the primary purchasers, the OIG found this was not necessarily true. VA and Indian Health Service purchased 538,617 units and 432,750 units, respectively; DoD purchased 292,055 units, which is still a significant volume.

Although DoD suffered the most significant financial impact when being excluded from a TPR, the OIG also found VA to have suffered potential impacts as well. For one pharmaceutical product, DoD received a TPR of \$81.34 per unit. The Coast Guard also received a TPR for the same product at \$91.10 per unit, while all other FSS users, including VA, were excluded from the TPR and paid the FSS price of \$437.90 per unit. DoD ultimately purchased 361,012 units of this product, while VA purchased 65,368 units, but Coast Guard only purchased 400 units. VA paid more than five times the price that DoD and Coast Guard paid under their respective TPRs. As a result, VA paid \$18,616,969 more than if it had received the DoD price.

The OIG recognizes that TPRs are *voluntary* price reductions offered by contractors and can represent a significant cost savings to the agencies to which they are offered. However, restricting TPRs for pharmaceuticals effectively imposes a significant monetary impact on the excluded agencies. These exclusions and restrictions on official price modifications to the FSS contract have no regulatory basis. The purpose of the FSS is to leverage the buying power of the entire federal government, not just certain agencies, even significant purchasers like VA. By allowing contractors to pick and choose which agencies are offered a TPR, the NAC is treating each government agency as a separate consumer, rather than a member of a single buying group leveraging its collective purchasing power.

The FSS contract and subsequent modifications of fundamental terms and conditions such as price—whether permanent or temporary—should not exclude any FSS users that are authorized by law or regulation, as doing so directly undermines the purpose of the FSS program and divides portions of the price reductions clause, such that one part can be agency-specific while the rest must be applied to all authorized users. In Recommendation 1, the OIG calls for the NAC to implement a written policy that requires TPRs, if offered, to be applied to all authorized FSS users. This should include revising the request for modification form to bar agency-specific TPRs.

Finding 3: Keeping TPRs Confidential Can Reduce Competition for Pharmaceutical Contracts and Is Inapposite to VA’s Responsibility as a Federal Government-Wide Negotiator

The OIG review found that many of the request for modification forms that initiated TPR modifications not only restricted which authorized FSS users could access the TPR, but also contained confidentiality provisions.

According to the Federal Acquisition Regulation, all FSS contractors are required to publish a price list, typically making FSS contract prices public records.³⁹ Authorized price lists are published by the VA's NAC, and contract pricing appears in the NAC's Contract Catalog Search Tool (CCST), which is an online listing of the NAC's active nationwide healthcare-related contracts. This allows commercial and government entities full access to contract prices. However, if a TPR is offered to select agencies, it is automatically restricted and not published in the NAC CCST.

The OIG reviewed 17 FSS contract files and found modifications for TPRs that included terms of confidentiality with regards to TPR prices. The OIG found the contractor can also specifically request that TPRs be restricted and that VA maintain confidentiality of TPR pricing.⁴⁰ This includes restricting pricing information, not only from commercial competitors, but also from other government agencies, so they are not even aware that a TPR is being offered to certain agencies or that they have received less favorable pricing. Federal regulation specifically allows for the exchange of acquisition information between agencies or contracting activities, including cost or pricing data, to promote uniformity.⁴¹ Sometimes the contractor claims it will not offer the TPR unless it is kept confidential. However, FSS contracting officials stated that they have not agreed to the confidentiality provisions in the request for modification form because they did not include the provision in the actual SF-30 unilateral modification. FSS contracting officials typically do not publish the TPRs in the CCST. Moreover, the SF-30 contract modification form sometimes incorporates by reference the request for modification package and backup documentation, which may contain confidentiality language. This type of offer and acceptance should be processed via a bilateral modification (signed by the contractor and VA), not a unilateral modification.

When the OIG asked about the basis for maintaining confidentiality, a representative of the FSS Service stated,

Confidentiality is a means to receive the deepest discounts possible while not putting the vendor under pressure to drive its prices down across its commercial sector, which does not have the same terms and conditions or public mission. Rather than dis-incentivizing price decreases, the current TPR approach recognizes the complexities of commercial pricing by allowing confidentiality in order to provide for maximum price decreases.

In addition to agreeing to confidentiality, the OIG found that supporting documentation for two TPR modifications that granted lower prices only to VA contained statements that VA would

³⁹ FAR part 8, sub. 8.4, 8.402(b), "General," accessed on October 10, 2019.

⁴⁰ Both contractors and FSS officials often refer to TPRs that are not offered to all FSS users as "blinded" because they are not published or accessible to public view.

⁴¹ FAR part 5, sub. 5.4, 5.405, "Exchange of Acquisition Information," accessed on October 10, 2019.

treat its drug in a preferential manner. In each instance, the relevant contractor submitted a letter of expectations that detailed its goals, such as formulary status or market share in VA. The letters were sent by the contractors directly to Pharmacy Benefits Management's deputy chief consultant of formulary management and were included as supporting documentation to the TPR modification. When the OIG asked Pharmacy Benefits Management consultants about these letters, the consultants stated such letters were commonplace but that nothing is agreed to in writing. The deputy chief consultant of Formulary Management referred to them as "handshakes on paper." He stated that his personnel are aware they cannot make any commitment regarding market share or volume. While Pharmacy Benefits Management, or any VA entity, never agrees in writing to letters of expectations, the letters are discussed with the understanding that the TPR will only be offered if the sales goals are achieved. In turn, if the goals are not achieved, it is understood that the contractor may terminate the TPR. By signing the TPR modification, which may include the letter of expectations as backup documentation, it is unclear whether the contracting officer and VA have agreed to the preferential terms proposed by the contractor.

The letters also indicated that the voluntary price reductions offered, and the eligible participants must not be disclosed, published, released, or in any other way made public. The letters further stated that if any of the terms of the modification or any details of the negotiations pertaining to the modification are disclosed to parties outside of VA, other than those parties necessary for the performance of the agreement, the contractor reserves the right to cease offering the voluntary temporary price reductions. These confidentiality clauses effectively allowed certain agencies to enjoy the benefit of the reduced pricing while other agencies paid higher prices for the same products, and the contractors benefited from higher federal ceiling prices.

NAC officials stated that contractors request confidentiality in pricing to remain competitive vis-a-vis other vendors, but it can have the opposite effect. Keeping TPRs confidential may decrease competition among FSS contractors as one contractor may be unaware that another contractor has lowered its price to the government using a TPR. If a contractor knew of a TPR offered by a competitor, it might offer a similar price reduction to compete for the government's business. If TPRs were made public, competition among contractors could increase, driving prices lower and saving taxpayers money. In some respects, unpublished and confidential TPRs are similar to noncompetitive blanket purchase agreements, which GSA regulations expressly prohibit. Unpublished official TPR modifications to the FSS contract also harm agencies that were excluded from the TPR because they have no knowledge that other government agencies have a TPR that they could also seek. This is not consistent with GSA's delegation of responsibility to VA for negotiating on behalf of all government agencies nor with the policy

behind the Competition in Contracting Act.⁴² The NAC should encourage competition and ensure all pricing is published per FAR 8.402(b).

The OIG's second recommendation addresses the NAC's need to obtain an opinion from VA's Office of General Counsel on the legality of agreeing to confidentiality pricing terms; whether such terms violate competition requirements; and if so, what corrective actions can be taken.

Finding 4: TPRs, Particularly Given Long Term, Can Negatively Impact VA's Ability to Negotiate and Award Big 4 and FSS Contract Prices

In preliminary interviews with contracting officials at the NAC, the OIG learned that some contracting officers who were offered a TPR awarded an FSS price without negotiation sufficient to ensure the government received the best price. In some instances, there was little support in the price negotiation memorandum that the permanent FSS prices awarded were fair and reasonable.⁴³ There was also at least one instance in which the memorandum indicated the contract specialist did not believe the permanent FSS price was fair and reasonable. To determine whether these were isolated incidents, the OIG selected a judgmental sample of 17 FSS contracts and 61 price negotiation memorandums.⁴⁴ The OIG team reviewed them to assess whether TPRs were factored into price negotiations and whether TPRs affected the determination of fair and reasonable pricing. It is the contracting officer's responsibility to obtain the contractor's most favored customer price or determine that the awarded price is fair and reasonable. The government may use various price analysis techniques to determine a fair and reasonable price.⁴⁵ This includes comparing proposed prices from multiple responses to the solicitation and comparing proposed prices to historical prices paid by the government or other entity.

The OIG found nine of the 61 price negotiation memorandums reviewed mentioned TPRs. For example, a contracting officer wrote in one memorandum, "With the established Big 4 and [other government agency] pricing and the promise that [the vendor] will try to maintain the current TPRs throughout the duration of the new contract, it is determined that the proposed product

⁴² GSA Interact, "The Competition in Contracting Act," in *GSA Interact*, a blog on the GSA website, accessed on February 4, 2019, <https://interact.gsa.gov/blog/competition-contracting-act-cica>. "The Competition in Contracting Act (CICA) was passed into law in 1984 as a foundation for the Federal Acquisition Regulation (FAR) and to foster competition and reduce costs. In accordance with FAR 6.102(d)(3), use of the Federal Supply Schedules (FSS) Program is considered a "competitive procedure" under CICA when the FSS ordering procedures are followed—i.e., the Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work (FAR 8.405-1) or the Ordering Procedures for Services Requiring a Statement of Work (FAR 8.405-2)."

⁴³ Price negotiation memorandums are used to summarize negotiation objectives, discussions, and the contracting officer's basis for determining fair and reasonable prices.

⁴⁴ A judgmental sample is nonrandomized and is guided by the expert knowledge of the team.

⁴⁵ FAR 15.404-1(b)(2), "Proposal analysis techniques," accessed on October 10, 2019. GSAR 538.270-1, "Evaluation of offers without access to transactional data," accessed on October 10, 2019.

pricings...are fair and reasonable.” The TPRs offered by this vendor were to select agencies, and not all FSS users. In other words, it appears from the memorandum that the FSS prices paid by the excluded agencies were not determined to be fair and reasonable as required by the Federal Acquisition Regulation. In another of these memorandums, the contracting officer wrote that the vendor proposed several TPRs (already in place from its prior FSS contract) that were lower than the most favored customer price, and the contracting officer chose to focus on securing the TPRs rather than negotiating on the FSS price. Thus, the offer of a TPR lower than most favored customer prices, and lower than the offered FSS price, was the basis on which the contracting officer determined fair and reasonable pricing. Because the TPR offered to select agencies was better than the most favored customer price, the contracting officer accepted the proposed pricing. This illustrates the possibility that a TPR might be used to resolve a disagreement between the contracting officer and contractor on the FSS price. For example, a contracting officer may attempt to negotiate most favored customer pricing government-wide. But if the contractor refuses and instead offers a TPR that is better than the offered FSS price, the contracting officer has an incentive to accept the TPR in lieu of negotiating further.

In addition to instances in which the memorandums evidenced that the TPR affected price negotiations, the OIG also found several cases in which a TPR was given at the same time an FSS contract was awarded or a product was added to the contract. For example, an FSS contract was awarded on September 15, 2017, and different TPRs to VA and DoD were also effective on the same date. Also, TPRs to Big 4 users were effective on September 29, 2017, and the overall FSS contract was awarded on September 29, 2017. If a TPR is offered at the exact same time that a contract is being negotiated, it gives the strong inference that the TPR had an impact on the determination of fair and reasonable pricing.

After reviewing select price memorandums and contract modifications, the OIG interviewed FSS contracting officials at the NAC who are responsible for awarding and modifying these FSS contracts. Officials interviewed included the contracting officers responsible for five of the nine price negotiation memorandums that mentioned TPRs. Every contracting officer interviewed stated that TPRs, even if discussed in negotiations or referenced in their memorandums, did not factor into their determination of fair and reasonable pricing. Although contracting officers may have been aware of a TPR during negotiations, they claimed the actual price was unknown, so no comparison could be made on whether the proposed prices were higher or lower than the TPR. Even if the exact price of the TPR was unknown, the OIG believes the contracting officer would be aware a TPR was being offered and it would be lower than the awarded FSS price. Despite these statements, based on the evidence the OIG found, it is not reasonable to conclude that TPRs have no impact on price negotiations and awarded FSS contract prices.

Long-Term TPR Effects on Fair and Reasonable Determinations

TPRs, by their very definition, are intended to be temporary. The FSS Service at the NAC speculated TPRs are given to mimic commercial pricing practices, such as when a promotion is

offered. Thus, contractors specify beginning and end dates when TPRs are submitted. Nevertheless, the OIG found many pharmaceutical items have had TPRs that remained in effect for an entire contract period of five or more years. The OIG also identified TPRs that are carried over from old to new FSS contracts. For example, the OIG found that one NDC pharmaceutical on an FSS contract has had a TPR since January 1, 2012. The TPR started on the vendor's prior FSS contract, was renewed every year, and was continued on its new FSS contract awarded on September 29, 2017. Another NDC on another FSS contract has had a TPR since May 1, 2014. The TPR began on the vendor's prior FSS contract and was renewed on its new FSS contract awarded on August 15, 2017. These long-term TPRs are not temporary and do not appear to reflect any commercial promotion being offered.

While the exact TPR price may change from year to year, the OIG found the same product may have an indefinite TPR period, as it is renewed year after year. In OIG interviews with contracting officials at the NAC, they confirmed some contractors consistently offer and renew TPRs. In some cases, the contracting officers work to maintain TPRs because they historically have been offered. When a TPR is set to expire, the FSS Service attempts to renew the TPR if the contractor has not already submitted a new modification form to renew the TPR. Long-term TPRs, such as anything exceeding one year, no longer represent promotional pricing or even "temporary" pricing, but instead reflect lower permanent prices disguised as temporary prices which can be restricted from public view. This can impact a contracting officer's determination of fair and reasonable prices, as well as federal ceiling price calculations that could govern costs for covered drugs to any agency not subject, or no longer subject, to a TPR.

As previously stated, the government should use various price analysis techniques to ensure a fair and reasonable price, including comparing the proposed prices to historical prices paid, whether by the government or not.⁴⁶ The contracting officials the OIG interviewed at the NAC stated TPRs are not factored into their determination of fair and reasonable pricing. However, if a long-term TPR has been in effect, contracting officers should be comparing those historical prices paid by the government to the offered prices, even if the historical prices were paid by select agencies. In discussions with GSA officials, they agreed that TPRs that have been in effect for years should not be considered temporary and should become permanent or at least be used to renegotiate FSS prices or additional volume discounts upon contract renewal. If VA has been paying half the FSS price for a drug for over five years, then the contracting officers should question whether the permanent FSS price is still fair and reasonable at the time a contract is being negotiated. Per the Federal Acquisition Regulation, a contracting officer should consider historical prices paid by the government. That should include long-term prices presented as TPRs.

⁴⁶ FAR 15.404-1(b)(2), "Proposal analysis techniques," accessed on October 10, 2019.

Long-Term Effects on Federal Ceiling Price Calculations

For contractors who offer long-term TPRs on covered drugs, there are concerns raised previously in this report about whether their federal ceiling prices are correctly calculated or whether TPRs are being used to avoid the mandates of the Veterans Health Care Act. Because a TPR is not considered to be a permanent change to the FSS contract price, it is not considered in the calculation of federal ceiling prices under the Act. Thus, the lower price a contractor offers to one or more agencies through a TPR is not used for the dual calculation. The FSS Max Cap is determined based on the official permanent FSS price on September 30th of that year. By contrast, if another contractor offers a similar discount by a permanent—and published—price reduction, that lower price is used for the dual calculation, thus lowering the FSS Max Cap in subsequent years. As a result, contractors with long-term TPRs evade the impact of the lower price on their federal ceiling price by offering a TPR. This gives them an unfair advantage over contractors who maintain permanent FSS prices and do not offer TPRs. The latter are subject to the dual calculation and the FSS Max Cap limiter based on the actual price paid by the government, not an artificially higher price that does not reflect the sometimes substantial discounts offered through non-public TPRs.

The OIG contends long-term TPRs, in particular, have the potential to negatively impact the negotiation and establishment of FSS prices, including the calculation of federal ceiling prices. If the vendor is offering a TPR, the FSS Service should attempt to negotiate the TPR as the FSS price. This is especially true of long-term TPRs, which should be used in the contracting officer's determination of fair and reasonable pricing. The NAC should not support the regular renewal of TPRs, and instead should consider the historical prices paid by the government and renegotiate the FSS price.

Finding 5: VA Assumes Risk by Processing Unilateral TPR Modifications

Contractors must electronically submit properly prepared request for modification forms to change FSS contracts to incorporate requested permanent or temporary price reductions. The OIG found that the FSS Service, in addition to processing modifications that exclude some FSS users and may require confidentiality, are processing modifications as unilateral rather than bilateral. A unilateral modification is signed only by the contracting officer for administrative changes, change orders or termination notices, or other mandatory changes; a bilateral modification is signed by the contractor and the VA contracting officer and is typically used to add or delete products or to change prices, as these represent “parties modifying the terms of the contract.”⁴⁷ Processing TPRs or any changes to the FSS prices as unilateral modifications does

⁴⁷ FAR part 43, sub. 43.1, 43.103, “Types of Contract Modifications,” accessed on October 10, 2019.

not comply with regulation or contracting procedures. This practice creates uncertainty and puts the government at risk in the event of a contract dispute.

As stated earlier, the FSS Service processed TPRs as bilateral modifications (signed by the contractor and VA contracting officer to change prices) prior to April 2016. The average processing time for price-reduction modifications then was 25 to 30 days, according to FSS Service staff interviewed. To expedite the modification process, the FSS Service conducted a Lean Six Sigma event (which uses a particular set of techniques and tools for process improvement). It recommended using unilateral modifications to process TPRs rather than bilateral modifications because there would be fewer days going back and forth with the contractor. Doing so would result in fewer delays related to communications with the contractor.

The goal of the FSS Service is to have all modifications for price reductions expedited from the receipt of a current, complete, and accurate modification package. According to FSS contracting personnel, price-reduction modifications are now typically completed within two to three days.⁴⁸ Effective dates of these modifications do not coincide with the typical dates of the first and fifteenth of the month. Rather, the effective date of the awarded modification is one to two business days from the date the government executes the SF-30 contract modification form. The SF-30 form only contains the contracting officer's signature and typically states,

This unilateral modification is issued to incorporate the attached temporary price reduction (TPR). The contractor has granted permission for the Government to unilaterally execute this modification via a signed statement in their Request for Modification package dated xx/xx/xxxx.

The request for modification form contains the contractor's signature and concurrence for unilateral modification. It states,

A signature on this RFM [Request for Modification] by an authorized signatory authority under this FSS contract constitutes express permission by the Contractor for the Government to issue and unilaterally execute the requested price reduction modification to this FSS contract at the pricing proposed by the Contractor.

According to the FSS Service, "There have been no issues with using unilateral modifications and risk has proven non-existent based on years of utilization. Converting to bilateral modifications as the standard operating procedure would unnecessarily delay the process, doubling or tripling the amount of time that ordering activities wait to receive price reductions."⁴⁹

⁴⁸ OIG interviews with FSS Service contracting officials on October 16 and 17, 2018, at the NAC in Hines, Illinois.

⁴⁹ Email from the director of Federal Supply Schedules, Office of the Associate Executive Director, on November 20, 2018.

According to federal regulations (FAR 43.103), changing a fundamental term and condition such as price typically cannot be processed unilaterally by the government. Since the request for modification form signed by the contractor is clear that the FSS contract is offering a TPR and consents to a unilateral modification, and the government accepts it by signing the SF-30 form, it could be considered a bilateral modification.

In addition to concerns about whether these modifications are compliant with the Federal Acquisition Regulation, processing TPRs as unilateral modifications issued by the government does not comply with accepted contracting procedures and puts the government at risk because it creates uncertainty with respect to the government's rights in the event of a contract dispute. Contracting officers at the FSS Service conceded they were not certain of the contractor's right to unilaterally terminate the TPR prior to its end date—which could subject the affected agencies to much higher prices for the term of the contract. There is also uncertainty regarding whether a court would determine that the contract modification is binding on the contractor and the government. Unilateral modifications of price could simply be ruled invalid or be ruled as bilateral modifications incorporating the request for modification as part of the contract modification. As a result, terms and conditions included in the request for modification, such as confidentiality provisions and preferential treatment of the contractor's product—which NAC officials claim they have not agreed to despite being included in the documentation—would be incorporated into the modification creating additional potential risk and liability to the government.

Although shifting to unilateral modifications has significantly reduced the procurement lead time, the processing time also could have been reduced simply by having the FSS contractor submit a signed modification with the request for modification. The contract specialist would have to simply reject the request for modification form if there were any errors or sign the modification if everything was in order, and it would be bilateral.

Conclusion

The purpose and stated objective of the FSS program are to leverage the government's buying power and provide competitive pricing for all FSS users government-wide that are authorized by statute or regulation. VA was delegated the authority by GSA to accomplish this goal for medical supplies, including pharmaceuticals, and has the obligation to negotiate prices for all authorized FSS users. However, the FSS Service at the NAC has allowed authorized FSS users to be excluded from access to TPRs and has awarded TPRs for the benefit of select agencies without the stated authority to do so. The OIG found that these TPRs disproportionately benefit VA. Current practices are not only contrary to the due diligence expected of VA as a contracting authority for all FSS users but are also inconsistent with other VA and GSA schedule contracting practices. No basis exists in federal law or guidance for awarding TPRs in this manner. The OIG found no policy or regulation that permits restricting TPRs to specific agencies. NAC personnel also could not identify regulatory authority to do so. In the absence of specific guidance, the

mandate to negotiate on behalf of the entire federal government should be given full consideration.

The OIG concluded the FSS Service at the NAC has established its own procedures via the request for modification form that facilitate contractors offering TPRs to certain agencies and not others. The FSS Service has applied agency-specific TPRs only to the pharmaceutical schedule, treating it differently from the other VA-managed schedules. The FSS Service is in effect modifying the terms and conditions of FSS contracts, resulting in the exclusion of some authorized FSS users. The OIG found regulation allows for customer-specific discounts only at the time of order (spot discounts), not at the FSS contracting phase. The regulations are purposely narrow. Any changes to the FSS contract, such as TPRs, should be applied to all federal agencies with access to the FSS.

The OIG determined that the impact of restricting TPRs under FSS contracts resulted in taxpayers paying \$602 million more than the lowest TPR for the same pharmaceuticals over a two-year period. The OIG also concluded the NAC's unilateral processing of TPR modifications, including maintaining confidentiality in pricing, is contrary to standard contracting procedures and VA's commitment to transparency, and may violate competition requirements. These confidential TPR modifications, processed by the NAC, have deprived other federal agencies of the ability to negotiate better prices because they are not made aware that VA or other agencies are paying less for the same product. Because VA lacks any written policy on administering TPRs, the OIG identified instances when TPRs appear to have negatively affected the negotiation and establishment of FSS prices, such as the calculation of federal ceiling prices and the routine renewal of TPRs exceeding one year.

Recommendations 1–4

The OIG made the following recommendations for the principal executive director and chief acquisition officer at the Office of Acquisition, Logistics and Construction:

1. Develop and implement a policy that prohibits restricted and agency-specific temporary price reductions on Federal Supply Schedule contracts, including procedures on how to process requests for temporary price reductions to ensure inclusion of all Federal Supply Schedule users.
2. Consult with VA's Office of General Counsel regarding the legality of confidentiality provisions in Federal Supply Schedule contract modifications for temporary price reductions, specifically whether they are consistent with competition mandates of the Federal Acquisition Regulation.
3. Develop a written policy for temporary price reductions that exceed one year and are subject to renewal, specifically addressing how such long-term temporary price reductions should be considered when determining fair and reasonable pricing on contract extension or renewals.
4. Consult with appropriate legal authorities, including the Department of Justice, regarding the legality of unilateral Federal Supply Schedule contract modifications for temporary price reductions.

Management Comments

On August 29, 2019, the principal executive director and chief acquisition officer at the Office of Acquisition, Logistics and Construction (OALC) concurred with Recommendations 2–4, and non-concurred with Recommendation 1.

In response to Recommendation 1 and Finding 1, OALC stated its treatment of TPRs are consistent with practices outlined in Public Law 102-585. OALC stated it cannot require contractors to provide TPRs to all federal agencies, as contractors can limit their offer of a TPR to a specific customer group under Public Law 102-585. In informal comments later provided on September 23, 2019, OALC added that there is no regulation or law that VA is violating by accepting TPRs, but that it is a reasonable exercise of a contracting officer's discretion to allow contractors to reduce prices to one customer or different groups of customers. OALC then added that declining an offer of a lower price to one or more FSS users could possibly jeopardize the cost savings to the government.

For Recommendation 2, OALC responded that they will have an initial meeting with VA's Office of General Counsel in September 2019 to discuss the legality of confidentiality provisions in FSS contract modifications for TPRs and conduct additional meetings if required. OALC responded to Recommendation 3 by noting that the FSS Service is developing local procurement

guidance on TPRs for short-term and long-term reductions. In response to Recommendation 4, OALC stated it will meet with VA's legal authorities and the Department of Justice, if necessary, to ascertain the legality of the use of a unilateral modification for the TPR process.

OIG Response

OALC asserts that FSS contractors may offer TPRs on FSS contracts to a specific FSS user, and not all authorized FSS users. However, they fail to cite any relevant authority or contract clause that allows limited TPRs in support of their position. The only citation provided is Section 603 of Public Law 102-585, the Veterans Healthcare Act of 1992, which requires manufacturers of covered drugs to sign a master agreement with the VA Secretary and to put covered drugs on an FSS contract at no more than the federal ceiling price set for the Big 4 agencies.⁵⁰ In its response, OALC seems to equate TPRs with statutory federal ceiling prices—statutory price limits set annually for the Big 4 agencies based on fluctuations in the average price paid to manufacturers by wholesalers. However, federal ceiling prices to the Big 4 agencies are not referred to or processed as TPRs. They are processed as permanent changes to the contract prices for the Big 4 or all authorized FSS users—whichever may apply. Public Law 102-585 does not address TPRs at all, let alone authorize contractors to limit the offer of a TPR to a specific customer group. Therefore, OALC's citation of the pricing provisions contained in Public Law 102-585 reflects a misunderstanding of TPRs and does not support its assertion.

As to additional OALC assertions, Public Law 102-585 does not support VA's accepting "differing levels of discounts by category of ordering activity." Rather, the authority for differing discounts by ordering activity, or agency-specific price reductions, is prescribed in Federal Acquisition Regulation Part 8.405-4. As stated in the OIG report, this regulation allows ordering activities to request price reductions at any time before placing an order or allows contractors to pass on price reductions only to an individual ordering activity for a specific order or blanket purchase agreement. However, these are not reductions to the Federal Supply Schedule contract price itself.

Public Law 102-585 also does not govern voluntary reductions to the Federal Supply Schedule contract price after a contract award. Voluntary price reductions are covered by the Price Reductions Clause, 48 C.F.R. § 552.238-75(e): "The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period."⁵¹ The plain language of the contract clause demonstrates that any voluntary reduction to the Federal Supply Schedule contract price is a reduction for all authorized Federal Supply Schedule users—that is, government-wide.

⁵⁰ Per 38 U.S.C. § 8126(b), the Big 4 are VA; DoD; the Public Health Service, including the Indian Health Service; and United States Coast Guard.

The OIG acknowledges that contractors may offer TPRs to specific federal customers or not at all, as it is voluntary. However, if a TPR is offered to VA, VA has an obligation to see that it is offered government-wide. VA has been delegated authority by the General Services Administration to negotiate Federal Supply Schedule prices on behalf of all federal agencies. Thus, the issue is whether VA is acting on behalf of all federal agencies or only itself or select others. Although Federal Supply Schedule contracts allow for voluntary price reductions, VA is not authorized by law or regulation to facilitate them going to some but not all authorized Federal Supply Schedule users. In fact, no other VA or General Services Administration schedules except pharmaceuticals process TPRs to specific agencies or users.

The benefit that VA claims cannot come at the cost of other federal agencies on whose behalf VA is responsible for negotiating the purchase of pharmaceuticals. The goal of the Federal Supply Schedule program is to achieve discounts based on the purchases of the entire federal government. OALC asserts that because VA often purchases the highest volume of pharmaceuticals of any government agency “it stands to reason that VA would benefit most from the TPR.” As the report states, even if volume differences could justify agency-specific TPRs (issues of legal authority notwithstanding), volume did not always dictate which agency received or benefitted most from a TPR. There were instances when Indian Health Service purchased a low volume and received a TPR, while the Department of Defense purchased significantly more and did not receive a TPR. There were also instances when the Department of Defense was the highest volume consumer and received a TPR while VA did not. The goal of the Federal Supply Schedule is to spread such discounts across the entire federal government. While VA overall may have received more TPRs and thus achieved more discounts on its purchases, other agencies paid far more than they would have had they received the VA price. For example, the Department of Defense paid \$515 million more than it would have had it been offered the lowest available TPR in every case reviewed, even though it spent \$3.1 billion in pharmaceuticals over the two-year review period.

The OIG recognizes VA’s streamlined approach to managing both permanent and temporary price reductions has resulted in a reduction in processing time. However, as stated in the report, the administrative burden to manage multiple prices falls on VA, not the contractor. The OIG found there were a significant number of price modifications linked to contractors offering different TPRs to different agencies. Further efficiencies could be achieved if the TPR process simply included all authorized users rather than multiple choices.

The OIG recognizes that VA cannot compel vendors to provide voluntary TPRs. However, if a vendor does offer a voluntary TPR, VA may accept that TPR only if the vendor complies with the Price Reductions Clause which contemplates that voluntary price reductions will be “Governmentwide.”

Therefore, the OIG believes that OALC’s assertions and nonconcurrency with the first recommendation are without merit. Nonconcurrency and inaction on the first recommendation

would result in denying some authorized Federal Supply Schedule users equal access to a duly executed reduction of the FSS contract price, which can result in millions of dollars of additional costs to U.S. taxpayers.

In the informal comments received on September 23, 2019, OALC asserts that there is no regulation or law that VA is violating by accepting agency-specific TPRs. The OIG disagrees with OALC's assertion, as regulations are clear that VA was designated the authority to award and administer medical-related FSS contracts for the use of the entire federal government and other eligible users.⁵² OALC asserts that it is a reasonable exercise of a contracting officer's discretion to award voluntary price reductions on the FSS contract that limits or restricts authorized FSS users. OALC fails to recognize in its response that a contracting officer's discretion is bound by the underlying authority granted to it under the FSS program. OALC claims that they are permitted to negotiate and award specific terms and conditions on an FSS contract, either at award or via modification, for only certain FSS agencies. Such a position is contradictory to the FSS program and taking such a drastic position requires VA acquisition officials to deny authorized FSS users access to the fundamental terms and conditions of the FSS contract. VA FSS contracting officials must operate within the confines of the FSS program and within their delegated authority. Awarding prices on FSS contracts to the benefit of only certain FSS users is outside of the scope of VA's delegated authority from GSA; therefore, doing so cannot be viewed as within the realm of a contracting officer's discretion. Denying FSS users unfettered access to FSS contracts and all the terms, conditions and rights of the FSS contract is unsupported. OALC also failed to address the plain terms of the price reductions clause which states voluntary price reductions are to be "*Governmentwide*."

OALC further asserts that VA's declining agency-specific TPRs may possibly jeopardize the cost savings to the government that VA and other OGAs are achieving. There is no data to support this conclusion. Moreover, the OIG found that excluding FSS users from the lowest TPRs on pharmaceutical schedule contracts over the last two years may have cost taxpayers an additional \$602 million. Regardless of the monetary impact of TPRs, VA FSS acquisition officials must comply with the authority of the FSS program, which grants FSS users access to FSS contracts without limitation, as well as with the terms of the price reductions clause. The OIG concludes that the OALC's response regarding the first recommendation is unresponsive and without merit.

⁵² FAR §§ 38.000, 38.101(d), and 8.402(a).

Appendix A: Eligibility to Use GSA Sources of Supply and Services

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

OGP 4800.2I
July 19, 2016

GSA ORDER

SUBJECT: Eligibility to Use GSA Sources of Supply and Services

1. **Purpose.** This Order provides definitions and listings of agencies and organizations authorized to use General Services Administration (GSA) sources of supply and services. It also provides definitive guidelines concerning eligibility requirements.
2. **Cancellation.** ADM 4800.2H is canceled.
3. **Background.** 40 U.S.C. §§ 501 - 502 authorizes the Administrator of General Services (Administrator) to procure and supply personal property and non-personal services for executive agencies and other Federal agencies, mixed-ownership Government corporations as identified in 31 U.S.C. § 9101, the District of Columbia, qualified nonprofit agencies for the blind or other severely handicapped individuals for use in making or providing an approved commodity or service to the Government, and state and local governments for certain Federal supply schedule purchases. Other organizations are eligible pursuant to other statutes under which GSA operates (such as 40 U.S.C § 602, which governs eligibility to obtain GSA Fleet motor vehicles and related services) or by reason of enabling statutory authority.
4. **Nature of revision.** To reflect statutory and administrative changes and to update the listings of organizations determined eligible to use GSA sources of supply and services.
5. **Definition.** GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR), 41 CFR Parts 101-26--Procurement Sources and Program, 101-39--Interagency Fleet Management Systems (GSA Fleet), 41 CFR Part 101-42, Disposition of Personal Property with Special Handling Requirements, the Federal Management Regulation (FMR), 41 CFR Parts 102-35 through 102-42 --Utilization and Disposal Programs, 102-117--Transportation Management, and the Federal Travel Regulation (FTR), 41 CFR Part 301-73 -- Travel Programs.
6. **Authority to use GSA sources of supply and services.** The authority to use GSA sources of supply and services is established by statute or regulation (see paragraph 7).

OGP 4800.21
July 19, 2016

7. Eligible activities. Organizations are eligible to use GSA sources of supply and services pursuant to 40 U.S.C. §§ 501 - 502 or other statutory authority; however, some organizations may be eligible to use only specific GSA sources of supply or services. In addition, although an organization may be eligible to use GSA sources of supply, particular sources may not be accessible due to limits of supply sources or geographical constraints. For example, in the case of GSA Fleet, it may not be practical for GSA to make certain sources of supply available. In addition, the terms of a specific contract may not permit participation by otherwise eligible organizations.

a. Executive agencies. 40 U.S.C. § 501, Services for executive agencies, authorizes the Administrator to procure and supply personal property and non-personal services for executive agencies to use in the proper discharge of their responsibilities, and perform functions related to procurement and supply including contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting. Executive agencies include:

(1) Executive departments. Cabinet departments are defined in 5 U.S.C. § 101 and are listed in Appendix A.

(2) Wholly owned Government corporations. Corporations wholly owned by the Government are defined in 31 U.S.C. § 9101(3). To the extent that GSA has determined that wholly owned Government corporations not defined in 31 U.S.C. § 9101(3) are eligible to use GSA sources of supply and services, such determinations are listed in Appendix A.

(3) Independent establishments in the executive branch of the Government. Independent establishments in the Executive branch are generally defined by 5 U.S.C. § 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are included in Appendix A.

b. Other Federal agencies, mixed-ownership Government corporations, the District of Columbia, qualified nonprofit agencies for the blind or other severely handicapped individuals for use in making or providing an approved commodity or service to the Government, and state and local governments for certain Federal Supply Schedule purchases. 40 U.S.C. § 502, Services for other entities, authorizes the Administrator to provide access to GSA sources of supply (or limited authorizations in some cases) to these organizations upon request. 40 U.S.C § 602 authorizes the Administrator to furnish GSA Fleet motor vehicles and related services to Federal agencies, mixed-ownership Government corporations, or the District of Columbia.

(1) Other Federal agencies. These are Federal agencies as defined in 40 U.S.C. § 102(5) that are not in the executive branch of the Government, i.e., any establishment in the legislative or judicial branch of the Government. However, the Senate, the House

OGP 4800.21

July 19, 2016

of Representatives, and the Architect of the Capitol and any activities under his direction are not Federal Agencies for purposes of this definition (see ¶ 7.c below). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in Appendix B.

(2) Mixed-ownership Government corporations. These are identified in 31 U.S.C. § 9101(2). To the extent that GSA has determined that mixed-ownership Government corporations not defined in 31 U.S.C. § 9101(2) are eligible to use GSA sources of supply and services, such determinations are listed in Appendix B.

(3) District of Columbia. The Government of the District of Columbia is eligible to use GSA sources of supply and services pursuant to 40 U.S.C. § 502(a)(3) and 40 U.S.C. § 602(c), the latter pertaining to GSA Fleet motor vehicles and related services. The Government of the District of Columbia and those parts thereof that have been determined eligible to use GSA sources of supply and services are listed in Appendix B.

c. The Senate, the House of Representatives, and activities under the direction of the Architect of the Capitol. These organizations are eligible to use GSA sources of supply and services under 40 U.S.C. § 113(d) upon request. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in Appendix B.

d. Other organizations authorized under the authority of 40 U.S.C. §§ 501 - 502. GSA has determined that certain organizations, other than those described above, are eligible to use its sources of supply and services under the authority provided to the Administrator by 40 U.S.C. §§ 501 - 502.

(1) Cost-reimbursement contractors (and subcontractors) as properly authorized. Under 40 U.S.C. § 501, the Administrator determined that in order to promote greater economy and efficiency in Government procurement programs, contractors performing cost-reimbursement type contracts or other types of negotiated contracts, when the agency determines that a substantial dollar portion is of a cost-reimbursement nature, may be authorized to use GSA sources of supply. This authorization is reflected in Part 51 of the Federal Acquisition Regulation (FAR), which provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA sources of supply. In each case, the written authorization must conform to the requirements of FAR Part 51, Use of Government Sources by Contractors. Contractors are not eligible to obtain GSA City Pair Program contract airfares.

(2) Cost-reimbursement or fixed price contractors' use of GSA Fleet motor vehicles and related services. Subpart 51.2 of the FAR states that, if it is in the Government's interest, a contracting officer may authorize a cost-reimbursement contractor to obtain, for official purposes only, GSA Fleet motor vehicles and related services. The FAR also states that Government contractors shall not be authorized to use GSA Fleet motor vehicles and related services for use in performance of any contract other than a cost-reimbursement contract, except as otherwise specifically

OGP 4800.21
July 19, 2016

approved by the Administrator at the request of the agency involved. Accordingly, any request for use of GSA Fleet vehicles and related services by other than a cost-reimbursement contractor must be requested by the agency contracting officer and approved by GSA.

(3) Fixed-price contractors (and subcontractors) purchasing security equipment. Under 40 U.S.C. § 501, the Administrator has determined that fixed-price contractors and lower-tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures for such acquisitions are set forth in 41 CFR 101-26.507.

(4) Non-Federal firefighting organizations cooperating with the U.S. Department of Agriculture, Forest Service. Pursuant to 40 U.S.C. § 501 and 16 U.S.C. § 580a, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from the Federal Acquisition Service (FAS). The current interagency agreement between GSA and the United States Department of Agriculture, Forest Service that enables purchasing based on these statutory authorities is identified as FAS No. FM-IA-06-002, December 27, 2006. Note: GSA transferred product management and sourcing responsibility to the Defense Logistics Agency in 2014 (i.e., "Fire Program supplies") for approximately 300 National Stock Number products; however, eligible non-Federal firefighting organizations covered by the above-referenced statutes may continue to purchase through GSA for wildfire suppression equipment or supplies still under the Agency's purview.

(5) Tribes and tribal organizations.

(a) The Indian Self-Determination and Education Assistance Act (ISDEAA). As provided in section 102(13) of Pub. L. 103-413 (the Indian Self Determination Act Amendments of 1994), a tribal organization, when carrying out a contract, grant or cooperative agreement under the Indian Self-Determination and Education Assistance Act, is deemed an executive agency for purposes of 40 U.S.C. § 501 (See 25 U.S.C. § 450(j). Additionally, each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an executive agency. If the self-determination contract contains a provision authorizing interagency motor pool vehicles and related services, as provided in Section 103 of the Indian Self-Determination Act Amendments of 1994, the tribe or tribal organization is eligible to use GSA Fleet motor vehicles and related services, if available (See 25 U.S.C. § 450(i). Authorization to use GSA sources of supply under the authority cited in this paragraph does not include purchases for resale unless the contract, grant, cooperative agreement, or funding agreement authorizes such activity. Information on the authority for resale must be provided to GSA, and based on that information, GSA must concur.

(b) The Native American Housing Assistance and Self-Determination Act (NAHASDA). As provided in section 101 of Pub. L. 110-411 (the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008), for purposes

OGP 4800.21

July 19, 2016

of 40 U.S.C. § 501, each Indian tribe or tribally designated housing entity shall be considered to be an executive agency in carrying out a program, service, or other activity under a block grant pursuant to NAHASDA; and each tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an executive agency (see 25 U.S.C. § 4111 (j)). Authorization to use GSA sources of supply under the authority cited in this paragraph does not include purchases for resale unless the block grant authorizes such activity. Information on the authority for resale must be provided to GSA, and based on that information, GSA must concur.

(6) Use of Certain Federal supply schedules by state and local Governments. State and local governments have access to GSA sources of supply, as detailed below. State or local government, defined at 40 U.S.C. § 502(c)(3), includes any state, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education). In any case of the use by a state or local government of a Federal Supply Schedule, participation by a firm that sells to the Federal Government through its Federal supply schedule contract shall be voluntary with respect to a sale to the state or local government under that contract.

(a) Cooperative Purchasing. Pursuant to 40 U.S.C. § 502(c), the Administrator may provide for the use by state or local governments of Schedule 70 and Schedule 84 for supplies and services available under those Federal supply schedules.

(b) Disaster Purchasing Program. As provided in 40 U.S.C. § 502(d), the Administrator may provide for the use of Federal Supply Schedules by state or local governments for the purchase of products and services to be used to facilitate recovery from major disasters declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, to facilitate disaster preparedness or response, or to facilitate recovery from terrorism, or nuclear, biological, chemical, or radiological attack.

(c) 1122 Program. 10 U.S.C. § 381 allows for the purchase of equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. GSA maintains the catalog of available products under this program.

(d) Public Health Emergencies. State, local, territorial, and tribal governments may access Federal Supply Schedules as authorized users for goods and services when expending Federal grant funds in response to Public Health Emergencies declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act, codified at 42 U.S.C. § 247d.

(7) The American National Red Cross. As provided for in section 2 of Pub. L. 111-263, the Federal Supply Schedules Usage Act of 2010, codified at 40 U.S.C. § 502(e), the American National Red Cross in furtherance of its purposes set forth in 36 U.S.C. § 300102 is authorized to access Federal Supply Schedules. Authorization to

OGP 4800.21
July 19, 2016

use Federal Supply Schedules under the authority cited in this paragraph does not include purchases for resale.

(8) Other Qualified Organizations. Under the Federal Supply Schedules Usage Act of 2010, 40 U.S.C. § 502(e), the Administrator may provide for the use by other qualified organizations, to include the National Voluntary Organizations Active in Disaster (NVOAD), of Federal Supply Schedules. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. This authority may not be used to purchase supplies for resale. The term "qualified organization" means a relief or disaster assistance organization as described in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5152).

e. Other statutes. Other statutes authorize specific organizations to use GSA sources of supply and services. The organizations that have had eligibility reviews conducted and that have been determined eligible to use GSA sources of supply are listed in Appendix B or Appendix C, as appropriate. The major categories of such organizations include:

(1) Certain institutions. The following activities are eligible to use GSA sources of supply and services and are listed in Appendix B:

- (a) Howard University (20 U.S.C. § 130)
- (b) Gallaudet College [University] (20 U.S.C. § 4362)
- (c) National Institute for the Deaf (20 U.S.C. § 4362) and
- (d) American Printing House for the Blind (20 U.S.C. § 106).

(2) Governments authorized under 48 U.S.C. § 1469a. As provided in 48 U.S.C. §1469a, the governments of the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands are eligible to use GSA sources of supply and services. These governments are listed in Appendix B.

(3) Entities authorized under the Foreign Assistance Act (FAA). Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2357, provides that the President may authorize friendly countries, international organizations, the American Red Cross, and voluntary nonprofit relief agencies to use GSA sources of supply and services when determined consistent with and in furtherance of the international development goals of the FAA. The President delegated his authority to make relevant Section 607 determinations under the FAA to the U.S. Agency for International Development (USAID). Entities determined eligible under this authority are listed in Appendix C. Purchases are limited to those for civilian use only.

OGP 4800.21
July 19, 2016

(4) Non-appropriated fund activities. FPMR 101-26.000 provides that certain civilian and military commissaries and non-appropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and GSA has concurred.

8. Ineligible activities. Except for the acquisition of excess personal property through sponsoring agencies, which is governed by FMR 102-36.185 - 102-36.205 and not this GSA Order, or in accordance with paragraph 7.d(6)(d) above regarding state and local governments expending Federal grant funds in response to Public Health Emergencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party.

9. Travel and transportation.

a. Persons. Organizations seeking to use GSA sources of supply and services for travel-related services and transportation of persons must obtain a separate determination for the requested service(s). This is necessary to determine whether the requesting entity is eligible under the language of the specific contract(s); e.g., travel management services, travel charge card services, and air passenger transportation.

b. Goods. An organization seeking to use GSA sources of supply for transportation of goods pursuant to a contract entered into under the FAR may do so if the requesting entity is eligible under the language of the specific contract(s); e.g., express small package delivery, express heavyweight delivery services. As a general matter, transportation under GSA's tenders of service entered into under 49 U.S.C. § 13712 or similar statutes governing common carriage are limited to transportation for the Federal Government. Thus, an entity that is not part of the Federal Government may not use these tenders of service.

10. Excess, surplus, and forfeited property. The eligibility of organizations to obtain supplies and services through GSA's personal property utilization and disposal programs is not governed by this GSA Order.

11. Determination of eligibility. Organizations other than those covered in the appendices to this GSA Order may be eligible to use GSA sources of supply and services. Organizations requesting an eligibility determination should submit a request by mail to the U.S. General Services Administration, Office of Government-wide Policy, Office of Acquisition Policy (MV), 1800 F St. NW, Suite 2200, Washington, DC 20405, or by email to spa.request@gsa.gov. Include in the request the name and contact number of the entity or organization with applicable supporting documentation and any separate statutory authority that may exist, for GSA's analysis and determination.

OGP 4800.21
July 19, 2016

Additional organizations, upon an affirmative determination of eligibility, may be posted to the appropriate appendix of the GSA Order on GSA's website at <http://www.gsa.gov/portal/mediald/176231/fileName/SignedGSADirective480021.action>.

12. Signature.

/S/
TROY CRIBB
Associate Administrator
Office of Government-wide Policy

OGP 4800.21
July 19, 2016

Appendix A: Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other agencies may be eligible, and GSA will make an eligibility determination on a case-by-case basis in response to requests received. (See paragraph 11). Listed here are major executive agencies and their components for which inquiries have been received.

Advisory Council on Historic Preservation
Agency for International Development
Agriculture, Department of
Air Force, Department of
American Battle Monuments Commission
Armed Forces Retirement Home
Army Corps of Engineers
Army, Department of
Bonneville Power Administration
Bureau of Land Management
Central Intelligence Agency
Christopher Columbus Fellowship Foundation
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Corporation for National and Community Service
Defense, Department of
Defense agencies and Joint Service Schools
Defense Nuclear Facilities Safety Board
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Emergency Management Agency
Federal Labor Relations Authority
Federal Maritime Commission
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association

A-1

OGP 4800.2I
July 16, 2019

Harry S. Truman Scholarship Foundation
Health and Human Services, Department of
Homeland Security, Department of
Housing and Urban Development, Department of
Interagency Council on the Homelessness
Inter-American Foundation
Interior, Department of the
International Boundary and Water Commission, United States Section
James Madison Memorial Fellowship Foundation
Justice, Department of
John F. Kennedy Center for the Performing Arts
Labor, Department of
Merit Systems Protection Board
Millennium Challenge Corporation
Morris K. Udall Scholarship and Excellence in National Environment Policy Foundation
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped [National Council on Disability]
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Navy, Department of
Nuclear Regulatory Commission
Nuclear Waste Technical Review Board
Occupational Safety and Health Review Commission
Office of Personnel Management
Office of Special Counsel
Overseas Private Investment Corporation
Peace Corps
Pension Benefit Guaranty Corporation
Postal Regulatory Commission
Presidio Trust, the
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
Social Security Administration
State, Department of
Tennessee Valley Authority
Trade and Development Agency
Transportation, Department of
Transportation Security Administration

A-2

OGP 4800.21
July 16, 2019

Treasury, Department of
U.S. Arms Control and Disarmament Agency
U.S. Secret Service
U.S. International Trade Commission
U.S. Navy Medical Research Unit
U.S. Postal Service
Veterans Affairs, Department of

A-3

OGP 4800.2I
July 19, 2016

Appendix B: Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. This list is not all-inclusive; other organizations may be eligible to use GSA sources of supply and services. GSA will make an eligibility determination on a case-by-case basis in response to requests received. (See paragraph 11).

Access Board, United States
Administrative Office of the U.S. Courts
American Printing House for the Blind
American National Red Cross
American Samoa, Government of
Architect of the Capitol
Arctic Research Commission, U.S.
Army and Air Force Exchange Service
Chemical Safety and Hazard Investigation Board
Civil Air Patrol
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase From People Who Are Blind or Severely Disabled (operating as U.S. AbilityOne Commission)
Contractors and subcontractors - cost reimbursement (as authorized by the applicable agency's contracting official)
Contractors and subcontractors - fixed price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, District of Columbia
Courts, Federal (not court reporters)
Delaware River Basin Commission
Denali Commission
District of Columbia, Government of
District of Columbia, Public Schools
District of Columbia, Pretrial Services Agency/Public Defenders
Eisenhower Exchange Fellowship
Election Assistance Commission, U.S.
Farm Credit Banks (AgFirst FCB, AgriBank FCB, CoBank ACB, Farm Credit Bank of Texas)
Federal Coordinator for the Alaska Natural Gas Transportation Project
Federal Deposit Insurance Corporation
Federal Financial Institutions Examination Council
Federal Home Loan Banks
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture)
Gallaudet College [University]
Government Printing Office
Guam, Government of

B-1

OGP 4800.2I
July 16, 2019

House of Representatives, U.S.
Howard University (Including hospital)
Institute of Peace, U.S.
Japan-United States Friendship Commission
Land Grant Institutions (as cost-reimbursement contractors)
Legal Services Corporation (not its grantees)
Library of Congress
Marine Mammal Commission
Medicare Payment Advisory Commission
National Capital Planning Commission
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (AMTRAK)
National Technical Institute for the Deaf
Navajo and Hopi Indian Relocation, Office of
Neighborhood Reinvestment Corporation
Non-appropriated fund activities (not for resale)
Northern Mariana Islands, Government of the Commonwealth of the
Public Interest Declassification Board
Puerto Rico, Government of the Commonwealth of
Regional Fishery Management Councils, U.S.
St. Elizabeth's Hospital
Senate, U.S.
South Atlantic Fishery Management Council
John C. Stennis Center for Public Service
Susquehanna River Basin Commission
U.S.-China Economic Security Review Commission
Tax Court, U.S.
Vietnam Education Foundation
Virgin Islands, Government of (including Virgin Islands Port Authority)
Washington Metropolitan Area Transit Authority (METRO)

B-2

OGP 4800.21
July 19, 2016

Appendix C: International Organizations and Others Determined Eligible under Section 607 of the Foreign Assistance Act

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other entities may also be eligible to use GSA sources of supply and services. In accordance with Section 607 of the Foreign Assistance Act, USAID will make an eligibility determination on a case-by-case basis in response to requests received. NOTE: Organizations included in this Appendix C have a limited authorization to access GSA sources of supply, namely for purchases consistent with and in furtherance of the international development goals of the Foreign Assistance Act. (See paragraph 7.s.(3)).

African Development Fund
American Red Cross
Asian Development Bank
Counterpart Foundation, Inc.
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Corporation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultative Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (WORLD BANK)
International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton
International Joint Commission-United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund

C-1

OGP 4800.2i
July 16, 2019

International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunications Union
International Wheat Council
Iraqi Ministry of Housing and Construction
Lake Ontario Claims Tribunal
Multinational Force and Observers
Multinational Investment Guarantee Agency (MIGA)
North Atlantic Treaty Organization (NATO)
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

C-2

Appendix B: Scope and Methodology

Scope

As stated in the text, the OIG's Office of Contract Review previously issued a preaward review of an FSS proposal submitted by a pharmaceutical vendor to VA. Because of the findings in that prior review, the OIG decided to research the overall prevalence of temporary price reductions (TPRs) in Federal Supply Schedule (FSS) pharmaceutical contracts. The OIG determined in its preliminary analysis that 89 of 651 national drug codes (NDCs) had different TPRs across authorized government agencies. The OIG conducted preliminary interviews with some FSS contracting officials at the NAC to better understand those findings. One contract specialist expressed the opinion that the awarded FSS/other government agency price was not fair and reasonable, but the contractor/vendor would not negotiate pricing any further, therefore the VA contract specialist reported relying on a TPR to get better pricing. In the Price Negotiation Memorandum, the contract specialist then concluded the FSS prices were fair and reasonable because of the vendor's promise to try to maintain the current TPRs offered to VA and other select agencies. Another VA contract specialist described not being able to negotiate "most favored customer" pricing and instead awarded a higher FSS/other government agency price because the vendor offered a TPR, even though the contract specialist reported being uncomfortable doing so. The OIG identified TPRs as possibly affecting the negotiation of FSS prices and impacting the determination of fair and reasonable pricing and added that concern to the list of issues to be examined.

Based on this prior work and related interviews, the Office of Contract Review's special projects team conducted a more expansive review from May 2018 through November 2018. The scope of the review focused on all NDCs on FSS contracts under the pharmaceuticals and drugs schedule (FSC Group 65IB), with temporary prices that were not offered to all authorized FSS users from January 1, 2016, through December 31, 2017. In addition, the team analyzed all government sales for the relevant NDCs for the same period to determine the monetary impact of excluding FSS users from TPRs, rather than offering TPRs to all authorized FSS users. Finally, the team conducted interviews with FSS contracting officials, pharmacy consultants at Pharmacy Benefits Management, and personnel at GSA.

Methodology

The OIG requested the NAC pharmaceutical pricing database records for January 1, 2016, through December 31, 2017. The OIG identified all NDCs in the database with temporary prices. The OIG determined there were 1,343 NDCs in the database with temporary prices and found TPRs were not offered to all authorized FSS users for 670 NDCs. The OIG did not analyze NDCs with temporary prices if they were offered to all FSS users.

After identifying the NDCs with restricted TPRs or different temporary prices offered to different agencies, the OIG requested and received all sales data through VA's Pharmaceutical Prime Vendor (McKesson) and DoD's Pharmaceutical Prime Vendor for January 1, 2016, through December 31, 2017. This included all contract and open market purchases through McKesson. Total government sales over this period were \$8,321,106,955 and represented 670 NDCs with TPRs not offered to all FSS users. These 670 NDCs represented 73 distinct FSS contracts.

Based on these 670 NDCs and 73 contracts, the OIG selected a judgmental sample of approximately 61 Price Negotiation Memorandums and 17 contract files to review in more detail. This included Price Decrease Request for Modification forms and SF-30 contract modification forms, as well as backup documentation and correspondence.

The OIG identified the FSS contracting officials responsible for or involved in the 17 contract files and interviewed them at the NAC in October 2018. They either awarded FSS contracts with existing TPRs or processed TPR modifications. These interviews helped the OIG team gain an understanding of whether TPRs affected negotiations of FSS contract pricing and how TPRs are processed. The OIG team also spoke with personnel at Pharmacy Benefits Management to understand their role in TPRs to VA. Lastly, the team conducted phone calls with GSA personnel to determine how TPRs are handled on non-VA managed schedules.

Fraud

The OIG was alert to any indicators for fraud, other illegal acts, and abuse during this review. OIG staff exercised due diligence in staying alert to these indicators but did not identify any.

Data Reliability

The OIG used the Enterprise Contract Management System to obtain data on contracts. It is a system that provides a structure for entering all contract information to include amendments and modifications. The OIG also used sales data provided by VA and DoD, directly from the prime vendors' systems. To test for reliability, the team determined whether any data were missing from key fields, including any calculation errors, or were outside the time frame requested. The OIG also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Testing of the data disclosed that they were sufficiently reliable for the review objectives.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix C: VA Management Comments

Department of Veterans Affairs Memorandum

Date: 08/29/2019

From: Principal Executive Director, Office of Acquisition, Logistics, and Construction (003)

Subj: Office of Inspector General Report, Project Number 2018-04451-PE-0148, The Impact of VA Allowing Government Agencies to be Excluded from Temporary Price Reductions on Federal Supply Schedule Pharmaceutical Contracts (VIEWS 01427508)

To: Director, Healthcare Resources Division, Office of Contract Review (55)

1. The Office of Inspector General (OIG) requested comments on the findings and recommendations in the draft report, "The Impact of VA Allowing Government Agencies to be Excluded from Temporary Price Reductions (TPRs) on Federal Supply Schedule Pharmaceutical Contracts", to determine the prevalence, basis, and administration of TPRs administered by the Department of Veterans Affairs (VA) and their impact on Government-wide contract negotiations when offered only to certain Government agencies and not to others. OIG made four recommendations.
2. The Office of Acquisition, Logistics, and Construction (OALC) completed its review of the subject draft report and concurs with all the recommendations and findings with the exception of Recommendation 1 and the associated finding.
3. Should you have any questions regarding this submission, please contact Melanie Griffin, Management Analysis Officer at (202) 461-6626 or Melanie.Griffin@va.gov.

(Original signed by:)

Karen L. Brazell

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OALC Comments on OIG's Report

Recommendation 1

Develop and implement a policy that prohibits restricted agency-specific Temporary Price Reductions on Federal Supply Schedule contracts, including procedures on how to process requests for Temporary Price Reductions to ensure inclusion of all Federal Supply Schedule users.

OALC Response: Non-concur. Contractors have the ability to offer TPRs to a specific Federal customer, but not to all. For example, Public Law (PL) 102-585, Section 603, of the Veterans Healthcare Act of 1992, allows specific Federal agencies to benefit from price reductions. Our practices are not inconsistent with the practices outlined in the PL. VA benefits greatly by these TPRs. Please refer to the link below to access the PL. <https://www.va.gov/opal/nac/fss/publicLaw.asp>.

We also non-concur with finding #1. The Government's handling of pharmaceutical pricing includes statutory support for differing levels of discounts by category of ordering activity. This is evident in PL 102-585, which establishes at least a 24 percent discount prior to negotiation for covered drugs to the "Big 4" (VA, Department of Defense, Health and Human Services including Indian Health Services, and the United States Coast Guard). VA is nearly always the highest volume consumer of pharmaceuticals and it stands to reason that VA would benefit the most from the TPR. Our TPR process and forms allow our suppliers a streamlined approach to submit permanent and TPRs so the lower pricing can be provided to our customers faster, and they may benefit from the savings sooner. We cannot require our vendors to provide TPRs to all Federal agencies. As previously mentioned above, under PL 102-585, contractors can limit their offer of a TPR to a specific customer group.

Recommendation 2

Consult with VA's Office of General Counsel regarding the legality of confidentiality provisions in Federal Supply Schedule contract modifications for Temporary Price Reductions, specifically whether they are consistent with competition mandates of the Federal Acquisition Regulations.

OALC Response: Concur.

Implementation Plan: OALC will engage VA's Office of General Counsel (OGC) to discuss legality of the confidentiality provisions in Federal Supply Schedule (FSS) contract modifications for TPRs. The initial meeting will be scheduled for September 2019. Additional meetings will be scheduled if required.

Estimated Completion Date: December 2019.

Recommendation 3

Develop a written policy for Temporary Price Reductions that exceed one year and are subject to renewal, specifically addressing how such long-term Temporary Price Reductions should be considered when determining fair and reasonable pricing on contract extensions or renewals.

OALC Response: Concur.

Implementation Plan: OALC's National Acquisition Center's FSS Service is currently developing local procurement guidance on TPRs for short-term and long-term reductions.

Estimated Completion Date: October 2019 (development of local procurement guidance), and December 2019 (training of FSS contracting staff).

Recommendation 4

Consult with appropriate legal authorities, including the Department of Justice, regarding the legality of unilateral Federal Supply Schedule contract modifications for Temporary Price reductions.

OALC Response: Concur.

Implementation Plan: OALC will engage VA's legal authorities (Acquisition Policy Office and OGC), and the Department of Justice, if necessary, to ascertain the legality of the use of a unilateral modification for the TPR process. The initial engagement will take place in September 2019. Follow-up meetings will be scheduled on a bi-weekly basis until resolved.

Estimated Completion Date: December 2019

Additional OALC Comments Received by the OIG on September 23, 2019:

Pursuant to 48 C.F.R. § 515.408(b), the current pharmaceutical schedule solicitation includes the "Commercial Sales Practices Format." The Commercial Sales Practices Format requires offerors to provide certain information about their commercial sales practices (CSP) to its customers. The Commercial Sales Practices Format defines "customer" as "any entity, except the Federal Government, which acquires supplies or services from the Offeror." Commercial Sales Practices Format, CSP-1. The FSS pricing on pharmaceuticals is negotiated based on Commercial Sales Practice information and the contracting officers negotiate based on this information. When evaluating multiple award schedule (MAS) offers (i.e. VA Federal Supply Schedule offers), "[t]he government will seek to obtain the offeror's best price (the best price given to the most favored customer). However, the Government recognizes that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved such as volume of purchases, ordering and delivery practices or value-added functions for the contractor that the Government does not perform. 48 C.F.R. 538.270. In FSS pricing the goal is to award Most Favored Customer Pricing and VA is negotiating this on all of the FSS contracts. CO's may award FSS pricing which contains pricing less favorable than the best price if the CO determines the price to be fair and reasonable. 48 C.F.R. 538.270(f).

A temporary price reduction (TPR) is a voluntary discount that is offered by mostly drug and pharmaceutical contracts. This is a price that is below the awarded contract price which was found to be fair and reasonable at the time of award. The Office of Inspector General states that "The OIG found that the NAC does not have the authority to limit or deny FSS users that are authorized by law, regulation, or policy access to an FSS contract, an item or service on an FSS contract, or a price on an FSS contract." The OIG without offering any citation for this conclusion then uses this conclusion as the premise for its argument that VA cannot negotiate any TPR on behalf on any agency or agencies without requiring the TPR to be extended to all FSS users. There is no regulation, or law that VA is violating by accepting TPRs and the IG acknowledges this lack of specific regulatory authority but then makes the unsupported conclusion on page 15 of its report, that although there is no policy guidance or regulatory authority that specifically permits restricting TPRs to certain FSS users, that "the law is clear that it is a prohibited practice." The Statement of Guiding Principles for the Federal Acquisition System provides broad authority for contracting officers to exercise their discretion and business judgment. FAR 1.102(d) provides as follows: "The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific

strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.”

In keeping with this permissiveness there is no law that addresses TPRs and states that they are legal or illegal. Rather, it is a reasonable exercise of a CO's discretion to allow offerors to reduce prices whether to a single customer or to different groups of customers. The TPR form the NAC has created allows offers to choose who to offer the TPR to and the first item is “all FSS users” and then lists different agencies or combinations of agencies. This acceptance of TPRs is a reasonable exercise of a CO's discretion and saves the government significant dollars overall per year. If an agency is not included in the TPR they are still guaranteed to pay no more than the fair and reasonable price that was determined at contract award.

As a practical matter, declining an offer to reduce government pricing to one or more FSS users simply because the price reduction is not offered to all FSS users would be possibly jeopardizing the cost savings to the government that VA and OGAs are achieving. VA recognized cost savings of \$2.6 billion in 2018 through TPRs which companies voluntarily offered. Other agencies such as DOD similarly achieved significant savings. There is no evidence that the IG has offered that companies will continue to offer these discounts if forced to offer to all FSS users, and some companies could decline to offer discounts.

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
----------------	---

Review Team	Zahid Syed Alyssa S. Witten
--------------------	--------------------------------

Other Contributors	Dyanne Griffith Martha Plotkin
---------------------------	-----------------------------------

Report Distribution

VA Distribution

Office of the Secretary
Veterans Benefits Administration
Veterans Health Administration
National Cemetery Administration
Assistant Secretaries
Office of General Counsel
Office of Acquisition, Logistics, and Construction
Board of Veterans' Appeals
Additional Directors

Non-VA Distribution

House Committee on Veterans' Affairs
House Appropriations Subcommittee on Military Construction, Veterans Affairs,
and Related Agencies
House Committee on Oversight and Reform
Senate Committee on Veterans' Affairs
Senate Appropriations Subcommittee on Military Construction, Veterans Affairs,
and Related Agencies
Senate Committee on Homeland Security and Governmental Affairs
National Veterans Service Organizations
Government Accountability Office
Office of Management and Budget
U.S. Senate
U.S. House of Representatives

OIG reports are available at www.va.gov/oig.